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FEDERAL COMMUNICATIONS COMMISSION

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F.C.C. 73-896

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
AMENDMENT OF PARTS 2, 74, AND 81 OF THE COMMISSION'S RULES CONCERNING THE ASSIGNMENT OF CALL SIGNS TO STATIONS WHICH OPERATE EXCLUSIVELY ON FREQUENCIES ABOVE 30 MEGAHERTZ AND WHICH ARE CLASSED AS COAST TELEPHONE STATIONS IN ALASKA OR FIXED STATIONS

ORDER

(Adopted September 6, 1973; Released September 13, 1973)

BY THE COMMISSION: COMMISSIONER ROBERT E. LEE ABSENT.

1. At the present time call signs formed from the two blocks KAA20 through KZZ99 and WAA20 through WZZ99 are being assigned to coast telephone stations in Alaska and to fixed stations. With the increase in the number of these stations licensed by the Commission to operate on frequencies above thirty megahertz, the number of three-letter, two-digit call signs available for assignment to Commission licensees as well as to stations operated by the United States Government has progressively diminished.

2. To provide sufficient available call signs for assignment to the above mentioned stations in the future, the call signs for each new coast telephone station in Alaska or fixed station authorized to operate exclusively on frequencies above thirty megahertz will be formed from the block WAA200 through WZZ999. Call signs consisting of three-letters, two-digits which were assigned to such stations prior to the effective date of this order will normally be retained upon license renewal. Consequent amendments of Sections 2.302, 74.982 and 81.72 of the Commission's Rules are attached.

3. Due to factors including the limited availability of three-letter, two-digit call signs taken together with the fact that call signs from the WAA200 through WZZ999 block are in abundance, notice and public procedure within the meaning of the Administrative Procedure Act 5 U.S.C. 553(b)(3)(B) are found to be unnecessary. The amendments set forth in the Appendix are therefore effective forthwith.

4. Authority for the amendment is contained in Section 4(i) and 303 of the Communications Act of 1934, as amended. In view of the foregoing, IT IS ORDERED that, effective October 23, 1973, Sections 2.302, 74.982 and 81.72 of the Commission's Rules are amended as set forth in the Appendix attached hereto.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Acting Secretary.*

APPENDIX

1. The table in Section 2.302 of the Commission's Rules is revised to read as follows:

§ 2.302 Call signs.

* * * * * * *

Class of station	Composition of call sign	Call sign block
* *	* * *	* *
Coast telephone in Alaska	3 letters, 2 digits	KAA20 through KZZ99. WAA20 through WZZ99.
	3 letters, 3 digits (for stations assigned frequencies above 30 MHz).	WAA200 through WZZ999.
Fixed	3 letters, 2 digits	KAA20 through KZZ99. WAA20 through WZZ99.
	3 letters, 3 digits (for stations assigned frequencies above 30 MHz).	WAA200 through WZZ999.
* *	* * *	* *

* * * * * * *

2. Section 74.982 of the Commission's Rules is revised to read as follows:

§ 74.982 Station identification.

(a) Call signs for instructional television fixed stations will consist of three letters and three digits pursuant to the provisions of § 2.302 of this chapter relating to fixed stations.

* * * * * * *

3. Section 81.72 of the Commission's Rules is revised to read as follows:

§ 81.72 Assignment of call signs.

* * * * * * *

(f) Marine fixed stations and marine relay stations shall be assigned individual call signs each consisting of three letters followed by two digits taken from either the block KAA through KZZ or the block WAA through WZZ or, in the case of stations operating exclusively on frequencies above 30 megahertz, three letters followed by three digits taken from the block WAA through WZZ.

(g) Marine control stations and marine repeater stations shall be assigned individual call signs each consisting of three letters followed by two digits taken from either the block KAA through KZZ or the block WAA through WZZ, or in the case of stations operating exclusively above 30 megahertz, three letters followed by three digits taken from the block WAA through WZZ.

* * * * * * *

F.C.C. 73-924

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMERICAN TELEPHONE & TELEGRAPH CO.— LONG LINES DEPARTMENT (A.T. & T.) Revisions of Wide Area Telephone Service (WATS) Tariff F.C.C. No. 259 and Private Line Service (PLS), Tariff F.C.C. No. 260 and THE WESTERN UNION TELEGRAPH CO. (WESTERN UNION) Revisions of Tariff F.C.C. No. 254	Docket No. 19419

MEMORANDUM OPINION AND ORDER

(Adopted September 6, 1973; Released September 13, 1973)

BY THE COMMISSION: COMMISSIONER REID DISSENTING.

1. The Commission has before it for consideration an Order of Certification in Docket No. 19419, issued by Administrative Law Judge Denniston on April 12, 1973. (FCC 73M-457). Basically, we are requested to clarify the issues in this proceeding and determine whether the technical necessity for the Automatic Data Access Arrangement (ADAA) is at issue herein. A petition for leave to file Comments and Comments regarding the order of Certification were filed on April 27, 1973, by the American Telephone and Telegraph Company and the Associated Bell System Companies (AT&T). A petition for leave to file Comments and Comments concerning the Order of Certification were also filed on May 11, 1973, by The Independent Data Communications Manufacturers Association Inc. (IDCMA). On June 5, 1973, the National Association of Regulatory Utility Commissioners (NARUC) filed a letter with the Commission commenting on the Order of Certification.

2. By *Memorandum Opinion and Order* released February 7, 1972, 33 FCC 2d 518, we suspended and instituted an investigation into the lawfulness of certain tariff revisions in AT&T's Wide Area Telephone (WATS) Tariff F.C.C. No. 259 and Private Line Service (PLS) Tariff F.C.C. No. 260. As originally filed, these tariffs included (a) substantial reductions in existing interstate charges for AT&T-provided "Dataphone" data sets that are offered for the modulation and demodulation of data signals; (b) establishment of new interstate charges for an AT&T-provided "automatic data access arrangement" that is required for customers who wish to connect their own data facilities, including modems, to the switched network through private line service; (c) changes in existing interstate tariff regulations to

permit more flexible use of AT&T-provided "multi-channel data station equipment" offered to customers who wish to use such channel-deriving equipment in combination with voice-grade data channels obtained from the telephone company; and (d) establishment of new interstate rates for an additional category of "Dataphone" sets suitable for combined sending and receiving and for handling data at higher speeds. Subsequently, modified tariffs were filed by AT&T, the hearing held in abeyance, and matching tariffs were filed by The Western Union Telegraph Company. (36 FCC 2d 498). The subsequent filings were designated for hearing and investigation in this proceeding. 39 FCC 2d 637 (1973).

3. By an information request dated March 2, 1973, the Chief of the Common Carrier Bureau (Bureau) directed a series of questions to AT&T relating to the ADAA, which were designated to elicit information to establish the technical necessity for the arrangement in conjunction with the specific rates for equipment designated in the tariffs under investigation. AT&T refused to supply this information on the grounds that the questions went beyond the issues specified by the Commission. The Administrative Law Judge was requested to clarify this question and after hearing arguments on the record took the matter under advisement. Subsequently, the Administrative Law Judge issued the Order of Certification currently under consideration, nonetheless expressing the view that "full exploration of the questions of need and technical performance characteristics of the items in issue, as well as of marketing practices, is required for an adequate determination of whether anti-competitive or monopolistic forces are embodied in these rate schedules."

4. We have considered the record in this matter and the Comments filed by AT&T, IDCMA and NARUC. AT&T basically contends that the issues in this proceeding inquire only into the lawfulness of the rates for the ADAA and that this is a rate investigation. It states that the order instituting this investigation noted IDCMA's allegations with respect to the ADAA, but failed to specify an issue as to the technical need for, and performance of, the ADAA. AT&T states that further orders in this proceeding also did not contain such an issue. Therefore, AT&T concludes that its general regulations requiring protection of the network were not affected by the filing in question and were not designated for invesigation in this proceeding. Moreover, AT&T maintains there is no need to consider the need of the ADAA, since this is presently at issue in other Commission proceedings, particularly Docket No. 19528 *In re Interstate and Foreign MTS and WATS* 35 FCC 2d 539 (1972). In Docket No. 19528, the Commission initiated "an inquiry into whether and under what conditions the telephone companies subject to our jurisdiction should provide new or revised classes of interstate and foreign MTS and WATS service whereby customers would have the option of furnishing Network Control Signalling Units . . . and any needed 'Connecting Arrangements' . . . (or the functional equivalent thereof) that are presently furnished only by the telephone company. . . ." (35 FCC 2d at 539) AT&T maintains that to litigate in Docket No. 19419 the lawfulness of the present requirements for the ADAA and possible alternative means for achieving such protection would result in the wholesale

fragmentation of, and duplication of, the proceedings in Docket No. 19528, which would be neither appropriate nor conducive to an expeditious resolution of the interconnection issue. AT&T also contends that an investigation of the interconnection issue in Docket No. 19419 would appear to usurp the functions of The Federal-State Joint Board in Docket No. 19528.[1] Similarly, NARUC, in its letter urges the Commission to defer determination on the need and technical performance of connecting arrangements, whether in Docket No. 19419 or other proceedings, until a determination on such issues is made by the Joint Board in Docket No. 19528 or, in the alternative, to consolidate any such proceeding in which the issues are raised in Docket No. 19528. If such issues are considered in a separate proceeding, NARUC requests that determination on such issues be made only upon consultation with the Joint Board. NARUC contends that the integrity of the Joint Board proceeding in Docket No. 19528 requires that issues before it not be prejudiced by prior determination in separate proceedings.

5. IDCMA contends that it is not merely the ratemaking policies of AT&T which are under investigation in this proceeding, but that the rates for these devices must be tested in relationship to each other and must be viewed in light of the technical and marketing restrictions AT&T applies. IDCMA urges that the requirement of the ADAA and the imposition of a charge only on customers not wanting to use AT&T data sets are unreasonably discriminatory, either standing alone or when viewed in light of the alternatives available to reduce the cost. Moreover, IDCMA contends that to the extent AT&T can impose a higher rate for the ADAA, or cause additional costs to the customer, or affect the customers' service, AT&T can aid their own data equipment sales. In summary, IDCMA submits that it is essential to consider the total impact of the ADAA and its rate in relationship to its need in order to understand its anti-competitive impact and lawfulness. In particular, IDCMA urges that the proceeding in Docket No. 19419 affords the Commission an opportunity to consider the need for and the design and performance characteristics of the ADAA in view of the charges for the device and to evaluate the alleged anti-competitive practices within the confines of a definite and precise factual situation, an undertaking which would not interfere with or duplicate Docket No. 19528.

DISCUSSION

6. The specific question before us is whether the issues we have designated for resolution in this proceeding are sufficiently broad to encompass the sub-issue raised as to the need for and technical performance characteristics of the telephone company-provided ADAA.

7. We framed the issues herein in the broad terms of the relevant statutory provisions, as follows:

(1) "Whether the charges, classifications, practices, and regulations published in the aforesaid tariffs are or will be unjust and unreasonable within the meaning of Section 201(b) of the Act:

[1] AT&T also requests that we issue the instant order absent advice from the Common Carrier Bureau. We have stated previously our views concerning the Bureau's role herein and adhere to that view now. See, *Memorandum Opinion and Order*, released May 4, 1973. FCC 73–446.

(2) "Whether such charges, classifications, practices, and regulations will, or could be applied to, subject any person or class of persons to unjust or unreasonable discrimination or give any undue or unreasonable preference or prejudice to any person, class of persons, or locality, within the meaning of Section 202(a) of the Act;

(3) "Whether the aforesaid tariffs conform to the requirements of Section 203 of the Act and Part 61 (47 CFR Part 61) of our Rules implementing that Section;

(4) "If any of such charges, classifications, practices, and regulations are found to be unlawful, whether the Commission should prescribe charges, classifications, practices, and regulations for the service governed by the tariffs, and if so, what should be prescribed." 33 FCC 2d 518 (1972)

Under these issues, any competent and material evidence is admissible that is relevant to whether and to what extent the ADAA charges and the regulations, classification and practices of the carriers with respect thereto are just, reasonable, and free of undue discrimination. For reasons to be stated, we believe that the questions relating to the need for the ADAA and its performance characteristics are matters that are clearly relevant to the issues herein.

8. Under the applicable tariff provisions, whenever a customer wishes to provide his own modem (modulating/demodulating unit) to condition data signals for transmission and reception over a carrier's voice-grade private line, the customer must have his modem connected to the telephone network through a "connecting arrangement" (CA) provided only by the telephone company. The ADAA is one of several CA's that are provided by the carrier for such purpose. AT&T claims that all carrier-provided CA's, including the ADAA, contain certain protective features that prevent harm to the carrier's network and services that could or would be caused if non-carrier modems are connected directly to the network without such CA's. Thus, customers desiring to obtain modems from an independent, competitive supplier that are functionally the same as the carrier's modems must pay the telephone company for such CA's. The ADAA, for example, costs the customer $15.00 to $20.00 for installation and $3.50–$4.75 a month rental. However, if the subscriber obtains a modem from the telephone company, he does not have to obtain or pay for any CA even if the carrier-provided modem is of the same make, characteristics and quality as that provided by a non-carrier source.

9. Clearly, the tariff requirement is anti-competitive in effect insofar as it provides that only those customers who do not use carrier-provided modems must use and pay for carrier-provided CA's, including the ADAA. This is because a customer obtaining modems from a competitor of the carrier, must pay not only the purchase price for such modems but he must also pay the installation and rental charges for the ADAA. Such tariff would appear to be unjust, unreasonable and unduly discriminatory *unless* the requirements thereof which have these anti-competitive effects can be justified by an over-riding public interest. *Com-u-trol Corp.* v. *GTE* 97 PUR 113 (1973) (Calif.) Moreover, even if the carrier were to make no anti-competitive charges for the ADAA when used with customer-provided modems, if the ADAA

operates to degrade such interconnected service in contrast to the service furnished through a carrier-provided modem, this too would be anti-competitive in effect. Accordingly, in order to determine whether there is any over-riding public interest consideration that would warrant the anti-competitive charges for the ADAA, it is pertinent to determine to what extent the ADAA is reasonably necessary to perform the function of protecting carrier facilities from the type of harm that we would consider to be contrary to the public interest. We are concerned particularly with the three types of harm that the National Academy of Sciences has advised us can degrade the service to the public generally, i.e. (a) excessive voltages or signal levels (b) improper network signalling and (c) line imbalance. If it is shown by the evidence herein that the ADAA is needed for such purposes, there would remain the question of whether and to what extent the ADAA may be over-designed or over-built in relation to such needs and thus whether the charges therefor are unnecessarily high. In addition, it is important to determine, apart from justification for the anti-competitive charges for the ADAA, whether and to what extent the ADAA may cause any degradation of service to the subscriber that is not present when carrier-modems are used. If such degradation may reasonably be expected to occur, it will become necessary to determine whether there is any over-riding public interest to warrant any such degradation. All of these questions are pertinent to the lawfulness of the tariffs in issue herein and should be considered in this evidentiary proceeding.

10. As is characteristic of common carrier proceedings, there are areas of overlap among the questions under consideration in most, if not all of the various cases now pending before us. This is true to a certain extent with respect to the proceedings in this case and the Joint Board proceedings in Docket 19528. However, as we recently stated, the Joint Board proceedings are not concerned with the question of lawfulness of any existing interstate tariffs. It is rather an inquiry and rule-making proceeding which seeks to determine what additional options, if any, shall be given to the customer whereby the customer may provide CA's and network control signalling units that are currently provided only by the carrier. We are not concerned in this case with the possibility of such options but only with questions of lawfulness of tariffs requiring a specific type of CA. The Joint Board will not be concerned with determining whether the ADAA equipment and the charges therefor are lawful or what the lawful charges, if any, should be for the ADAA. In setting up the Joint Board, we specifically stated that we were concerned in such joint proceedings with whether and under what terms and conditions customers should be given the option of providing any *needed* CA in lieu of carrier-provided CA's. 35 FCC 2d 539; page 542 (1972). Thus, in the instant case we must determine whether there is a need for the ADAA and if we find on the basis of the evidence herein, that ADAA's serve a need in the public interest, and we approve or prescribe appropriate charges therefor for interstate private line service, then the Joint Board will be concerned with whether and under what terms customers should be allowed to provide such ADAA's or the functional equivalent thereof, from sources of supply other than the carrier.

If we should find that there is no overriding public interest warranting the use of the ADAA, this would moot any question before the Joint Board as to any options for customers to provide such unneeded device.

11. Our treatment of the question before us is consistent with recent actions by AT&T revising the interstate tariffs with respect to certain other carrier-provided CA's. Thus, AT&T has recently changed its interstate tariffs generally to eliminate the requirement for carrier-provided CA's for customer-provided headsets and non-powered conferencing devices. Neither we nor AT&T considered this action by AT&T of making its carrier-provided CA's unneeded for such usages as impinging upon the Joint Board issues in Docket 19528; such action merely made it unnecessary for the Joint Board to consider whether customers using such head sets and conferencing devices should have the option of providing CA's or the functional equivalent thereof for such customer devices. For the same reasons, our determination herein of the ADAA questions discussed above will not, in our judgment, affect the Joint Board's deliberations in Docket 19528.

12. We should make it clear that we agree with NARUC that no decision should be made in this, or in any other case pending before us concerning the lawfulness of interstate tariffs, that would infringe in any way upon the determinations of the Joint Board with regard to the issues before it. Accordingly, the Presiding Judge should not admit evidence in this case that may be offered for the purpose of showing that customers should be allowed the option of providing any needed ADAA or any other CA or the functional equivalent thereof. These are matters that are in issue in Docket 19528 and we agree that they should be left for determination by the Joint Board. We recognize that there may be technical evidence adduced on the record herein with respect to the types of network harm that the ADAA is designed to prevent that may be of interest to the Joint Board and which it may wish to give some consideration to in resolving the questions before it. To the extent that this occurs, we will, of course, make such evidence available to the Board for its use in the proceedings in Docket 19528. Furthermore, in view of the aforementioned mutual objectives of NARUC and the Commission, we would welcome the participation by NARUC as a party in this proceeding.

13. In view of the foregoing, we agree with the conclusions of the Presiding Judge that, in order to determine whether the ADAA tariff provisions are just, reasonable and non-discriminatory within the meaning of Sections 201(b) and 202(a) of the Act, it is necessary to investigate herein the questions raised concerning the need for and technical performance of, the ADAA, including the marketing practices of the carriers with respect thereto. In this latter connection, we are deleting the footnote from our initial hearing order herein, 33 FCC 2d, at page 520, which excluded, at that time, consideration of marketing practices relating to carrier-provided modems, namely the 201A and 201B data sets. We believe that the marketing practices of the carriers with respect to all of these carrier-provided devices are pertinent to the anti-competitive issues in this case.

14. IT IS ORDERED, That the issues herein are clarified and defined as set forth above and that the Presiding Judge shall proceed accordingly.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Acting Secretary.*

42 F.C.C. 2d

F.C.C. 73-957

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of the Applications of AMERICAN TELEPHONE & TELEGRAPH CO. For Authorization To Construct and Operate Five Earth Stations To Provide Domestic Communications Satellite Services; and To Contract for the Use of Communications Satellites and Associated Services Pursuant to Section 214 of the Communications Act.	Files Nos. 25-DSE-P-71, 26-DSE-P-71, 27-DSE-P-71, 29-DSE-P-71, 20-DSE-P-73

MEMORANDUM OPINION, ORDER AND AUTHORIZATION

(Adopted September 12, 1973; Released September 12, 1973)

By THE COMMISSION: COMMISSIONER ROBERT E. LEE ABSENT: COMMISSIONER JOHNSON, REID AND WILEY CONCURRING IN THE RESULT.

1. The Commission has before it the above-captioned applications of American Telephone and Telegraph Company (AT&T) for authorizations pursuant to Section 214 of the Communications Act of 1934, as amended, to contract for the use of communications satellites and associated services, and to construct and operate five satellite earth stations in the continental United States to establish channels of communications by means of a domestic satellite system. The earth stations will be located near Hawley, Pennsylvania; DeLuz, California; Hanover, Illinois; Woodbury, Georgia; and Three Peaks, California. The applications, with the exception of one were originally filed on March 3, 1971, as part of AT&T's domestic satellite system proposal submitted pursuant to the *First Report and Order* in Docket No. 16495 (22 FCC 2d 86). The fifth application (Three Peaks, California) was filed on May 3, 1973. The applications, referred to herein collectively as the "system application," were amended on March 29, 1973 to accord with the policies promulgated in the Commission's *Second Report and Order*, adopted June 16, 1972 (35 FCC 2d 844) as modified by our *Memorandum Opinion and Order* of December 21, 1972 (38 FCC 2d 665).

2. AT&T proposes to use its earth stations in conjunction with communications satellites and associated services leased for a period of seven years from the Communications Satellite Corporation (Comsat) pursuant to an Agreement entered into between the parties on Februray 28, 1973. The construction and operation of the satellites and the associated services incident thereto are the subject of separate applications and amendments thereto filed by Comsat, including petitions by Comsat and Comsat General Corporation (Comsat General), to permit substitution of Comsat General as the party

in interest in the applications and amendments of Comsat. Commission action with respect to these applications and petitions is being taken concurrently herewith.

3. Each of the five earth stations will have two 100-foot diameter antennas. The Hanover and Woodbury stations will each be equipped initially for transmission of two channels (message traffic) in the 5925–6425 MHz band and reception in the 3700–4000 MHz band. The DeLuz and Three Peaks earth stations will be equipped initially for transmission and reception of four channels in the same bands, and the Hawley station will be equipped initially for the transmission and reception of five channels in the same bands. The estimated cost of the five earth stations is about $32 million. There are no unresolved frequency conflicts.

4. We find that AT&T is legally, technically, financially and otherwise qualified to undertake the construction and operation of its proposed domestic satellite system and that the facilities would not have an adverse impact on AT&T's existing services. Upon consideration of the radiation hazard and other environmental factors set forth in the instant applications, we are satisfied that construction of these earth stations will comply with the policies set forth in the Commission's *Memorandum Opinion and Order* of December 21, 1972 in Docket No. 16495 (38 FCC 2d 665, 703–704).

5. In response to the conditions applicable to AT&T's initial use of satellites prescribed in the Commission's *Second Report and Order* of June 16, 1972 and *Memorandum Opinion* of December 21, 1972, AT&T, in its amended applications, has made various representations as to how it will comply with such conditions. Thus, we further find that with one significant exception, AT&T's representations are in compliance with those conditions and, but for that exception, a grant of its applications would serve the public interest, convenience and necessity. The one exception involves AT&T's representations concerning the policies and practices the Bell System intends to follow in providing other satellite system and earth station licensees of the Commission with terrestrial interconnection facilities and services. We will now discuss this matter and the conditions we intend to attach to our grant of AT&T's applications in order to assure compliance by the Bell System with our interconnection policies and objectives.

INTERCONNECTION ARRANGEMENTS

6. In our *Second Report and Order*, we stated, that we would require all terrestrial carriers seeking domestic satellite system authorizations to submit, for Commission approval prior to action on their applications, a description of the kinds of interconnection arrangements they will make available to other satellite systems and/or earth station licensees. This requirement was set forth in furtherance of our stated policy objective of

> * * * assuring that all carriers providing retail interstate satellite services (whether or not affiliated with Bell System companies) have access at nondiscriminatory terms and conditions to local loop and interexchange facilities as necessary for the purpose of originating and terminating such interstate services to their customers (paragraph 34, 35 FCC 2d at 856).

7. By our *Memorandum Opinion and Order* of December 21, 1972, we denied AT&T's petition for reconsideration of the above requirement insofar as it contemplated a showing of the specific terms and conditions regarding interconnection. We again stressed our conviction that such requirement is essential to the availability of timely and effective interconnection arrangements which we regard as vital to meaningful implementation of authorizations issued by us in the public interest to other satellite system licensees.

8. The amended applications filed by AT&T purported to respond to the Commission's above-described policy by representing, generally, that the charges for interexchange channels furnished by Bell to satellite common carrier licensees would reflect the costs involved for such facilities in each specific case with provision for special construction charges where applicable. With respect to local distribution facilities, AT&T represented that the facilities would be the same as those used in furnishing Bell System services, and would be available to satellite carriers under like circumstances. In case of interconnecting facilities that would be required by non-carrier licensees of earth station facilities, AT&T represented that it would make such facilities available under tariffs in the same manner and subject to the same conditions as it provides such facilities pursuant to its general tariff offering to licensees of private microwave communications systems.

9. These representations by AT&T were challenged on various grounds by Comsat/MCI,[1] American Satellite Corporation's "Petition to Stay" and General Electric, Inc. as failing to comply with the Commission's *Second Report and Order*. By letter of May 17, 1973 to AT&T, the staff advised AT&T that it had not been sufficiently specific in its applications to show that AT&T's interconnection proposals would accomplish the Commission's policy objectives with respect to interconnection. Accordingly, AT&T was requested to supplement the showing made in its applications with additional specifics in various respects.

10. In response to these staff requests, AT&T submitted, under dates of June 25 and July 27, 1973 clarifying and amplifying explanations of its proposed treatment of satellite licensees seeking interconnecting facilities. In addition AT&T has responded to the objections filed by General Electric and American Satellite.

INTERCONNECTION CONDITIONS RE CARRIER LICENSEES

11. In summary, AT&T's proposal, as clarified, may be described as follows as it relates to interconnection facilities required by satellite carrier licensees:

(a) *Local facilities.* Dedicated voice grade channels will be provided on a negotiated lease contract basis within "the local distribution area" of the telephone company between the offices of the satellite carrier and its customers as well as between the earth station of the carrier and its customers when both are within the same "local distribution area." Other than voice grade channels (e.g., TV transmission, wide band) will be provided subject

[1] Comsat/MCI withdrew its objections by letter of July 18, 1973.

to availability and where necessary, subject to special construction arrangements. Charges will be based on nationwide average costs for local distribution facilities until regional, area, or state-wide cost studies become available when charges will then be related to such costs.

(b) *Interexchange (IX) facilities.* Such facilities will be provided (on a dedicated basis) between the earth station and the metropolitan office of the carrier and will also be provided when necessary to cover any "Local Distribution Area" as delineated by the telephone company. These facilities will likewise be provided on a negotiated lease contract basis. The charges therefor will vary from carrier to carrier depending upon earth stations, type and quantity of access facilities required by each carrier, and the extent to which it may be appropriate or feasible to use existing facilities. The charges will compensate AT&T for its costs incurred in providing the specific facilities. They will therefore include provision for material and installation costs, depreciation, maintenance, administration, income and other taxes, cost of capital, and any other costs that might necessarily be incurred. Where special construction of access facilities is required, the arrangements will provide for the recovery of all costs, even if the facilities are used only a short time.

12. We will accept AT&T's showing as clarified, as in substantial compliance with our policy objectives, subject to certain conditions we deem essential to meet residual, but basic, concerns that AT&T's showing leave with us, and to provide adequate assurance that satellite licensees will have access to the terrestrial facilities they require of the Bell System on reasonable and non-discriminatory terms and conditions.

13. With respect to the concerns presented by AT&T's showing, we have no reason to challenge AT&T's proposed practice of relating charges to the actual costs incurred in furnishing the facilities needed by our satellite licensees and of providing for special construction and termination liability. These measures, reasonably applied, will avoid the undesirable consequences of burdening other services of the Bell System with costs attributable to interconnection facilities furnished to satellite carriers.

14. At the same time, however, we are concerned with respect to the uncertainties under the proposed lease contract approach advanced by AT&T with respect to the computation of actual costs in any given case. We are also concerned as to the possible lack of uniform treatment to be accorded the several satellite carriers under like circumstances and conditions. In addition, there is reason for concern with respect to the lack of definiteness of the geographical area to be encompassed in any particular situation by the so-called "local distribution area."

15. We are also concerned about the part of AT&T's proposal that would impose certain limits on the provision of IX facilities to domestic satellite carriers. Under the proposal, IX facilities will be furnished only for the interconnection of earth stations with the metropolitan offices of the carriers and to interconnect exchanges within the afore-

said "local distribution areas." Under AT&T's proposal, a satellite carrier could not obtain IX facilities to furnish service to its customers located anywhere in the United States nor would such IX facilities be furnished to enable a domestic satellite carrier to establish its own operating centers throughout the United States for the provision of service to customers at such centers. (The carrier could establish such centers and interconnect them by means of its own private microwave systems, for example, and in that event Bell would provide local distribution facilities at such centers.)

16. We believe that AT&T's proposal is too restrictive to comply fully with the spirit and intent of our *Second Report and Order* insofar as interconnection is concerned. It is our policy that carriers who are authorized satellite facilities should be responsible for providing end-to-end service to their customers and that all satellite carriers should, themselves, undertake the construction of new facilities required for access to their earth stations. However, our policy also recognizes that, obviously, circumstances will exist where establishment of viable domestic satellite systems may well make it necessary or appropriate for satellite carriers to obtain the use of and operate over the terrestrial facilities of the Bell System or another carrier. In such instances, we expect that where there is a ready supply of those critical terrestrial facilities, they will be available to the satellite carrier licensee under lease terms and conditions that will facilitate end-to-end service by the carrier licensee.

17. Additional questions arise from our review of the specimen contract submitted by AT&T as indicative of the principles it will follow in providing local loops to satellite carriers. This contract (which is an actual lease contract entered into with Nebraska Consolidated Communications Corporation, a specialized common carrier) provides many terms and conditions of the type and substance contained in the existing tariffs of AT&T applicable to its offering of private line channels to the general class of private line service users. However, there are certain provisions in the specimen contract that are not normally found in the tariffs and that raise substantial questions of propriety as part of an offering of facilities or service by a communications common carrier. Among these are the following examples:

(a) The contract provided that the telephone company will provide facilities if "in its judgment" facilities are available "over and above its operating needs." This provision would permit Bell companies to favor AT&T in the provision of facilities to domestic satellite carriers.

(b) The contract provides that either party may terminate the contract for any reasons whatsoever at the end of the initial two year contract period and at the end of each yearly contract period thereafter. Thus, there is no obligation on the part of Bell to provide facilities beyond the initial two year period and there is no provision for prior FCC approval before any such service is discontinued.

(c) The contract limits the liability of Bell for its negligence in providing facilities to a satellite carrier to a refund of a portion of the charges. Even if Bell were grossly negligent and provided no service at all due to such negligence, Bell would have no liability under the contract to the satellite carrier or the latter's customers except to refund charges.

(d) The contract provides for certain unilateral adjustments in the charges whenever there are changes in the wholesale price index, without opportunity for review by the Commission as to justification for such changes.

18. Because of the foregoing types of concern, and having in mind the general statutory requirements of Title II of the Communications Act, with respect to the filing of tariff schedules, the staff raised the question with AT&T as to why the provision of interconnection facilities by the Bell System companies should not be governed by tariff schedules duly filed pursuant to Section 203 of the Act and setting forth the charges, classifications, regulations and practices applicable thereto. AT&T responded to this question by its letter of July 27, 1973 which in essence stated that "under present circumstances" contracts appear to be the most appropriate means to "effectuate their private arrangements," although AT&T agreed that it is the Bell System's intention "to provide timely and effective access arrangements to the other satellite carriers on reasonable and non-discriminatory conditions."

19. Upon consideration of all of the foregoing, it is our view and we conclude that the filing of tariff schedules rather than the negotiation of private contracts is the most appropriate means by which to achieve our objective that these facilities shall be provided to other satellite carriers on "reasonable and non-discriminatory conditions." One of the primary purposes of tariffs is to assure that carriers will provide facilities and services without discrimination. In addition, Section 203 of the Act requires a carrier to file tariffs for all wire and radio communications provided by itself and its connecting carriers. 47 U.S.C. 203. Contracts between AT&T, its operating affiliates, and connecting carriers are appropriate because these are arrangements pursuant to Section 201(a) of the Act, whereby two or more carriers enter into contractual arrangements for through routes and the division of revenues for traffic handled over such through routes. Similarly we have heretofore permitted the Bell system and Western Union to utilize private contracts as a basis for the exchange of facilities between the Bell System and the Western Union Telegraph Company.

20. However, under the proposals herein, Bell is not proposing to establish through routes under Section 201(a) of the Act with the domestic satellite carriers nor is it proposing to enter into contracts similar to the Bell/Western Union contracts whereby Bell and the domestic satellite systems would exchange facilities between them for their respective operational purposes. To the contrary, it appears clear that the Bell System will be providing wire and radio communications to domestic satellite carriers that are comparable in all essential respects to the wire and radio communications facilities provided under tariffs by Bell under its regular private line service tariffs or under the special construction tariffs of AT&T. We see no reason why tariffs should not be filed by the Bell System to cover facilities supplied to satellite licensees. The statutory requirement under our Act for filing of tariffs is based upon the national public interest in securing uniformity of treatment to all, to suppress unjust discrimination and undue preferences, and to prevent special and secret agreements, in respect to interstate wire and radio communications, and to that end to require

that rates applicable thereto be established in a manner calculated to give them publicity, to make them inflexible while in force, and to cause them to be unalterable except in a manner prescribed by statute.

21. Accordingly, we shall impose as a condition to the grant herein of the AT&T applications that all charges, classifications, regulations and practices applicable to the provision by the Bell System companies of interconnection facilities shall be set forth in tariff schedules to be filed pursuant to Section 203 of the Act and Part 61 of our Rules.[2] We shall also require AT&T to file such tariff schedules, except for specific charges, within 60 days from our grant herein. We recognize that the dollar and cents rates to be charged cannot be filed with similar promptness with the possible exception of charges for voice grade local loops. As urged by AT&T, it is not possible, with the possible exception of voice grade local loops, to set forth the precise levels of charges for interconnect facilities and we recognize that charges may vary from location to location (see paragraph 11 above). But we expect the general tariff which we are requiring to be filed in 60 days from the date of this grant to set forth clearly all of the costs and other factors to be considered by the Bell System in developing its charges as well as the terms and conditions governing the service, except the exact rates. As is the practice in certain other services (e.g., cable television channel service, Series 10,000), we shall require the Bell System companies to file the exact rates on a case-by-case basis, i.e., for such location. Such exact rates shall be filed in accordance with Section 203 of the Act and Part 61 of the Rules on 30 days' notice prior to the service date unless a shorter period is authorized upon a request.

22. Finally, to assure equality of treatment among the Bell and non-Bell carriers, we shall require as a condition that Bell shall afford priorities in the installation, maintenance, restoration, and repair of facilities furnished to satellite carriers at least as favorable as those priorities accorded other Bell companies or the customers of Bell companies in connection with the provision of private line services and facilities.

23. The foregoing discussion treats most of the basic issues raised by American Satellite Corporation in its "Petition to Stay" wherein it objects to AT&T's interconnection proposals. However, ASC also requests that Bell System companies be required to furnish to domestic satellite carriers not only the basic voice grade channels needed for local distribution service to the customers of the satellite carrier, but also all terminal equipment offered by the Bell System to the public in its regular private line services. AT&T states that the Bell System does not propose to do so pointing out that the provision of such terminal equipment has not been done for specialized common carrier obtaining facilities from the Bell System and that this has proven to be satisfactory to such other carriers. However, AT&T indicates that it is willing to continue discussions with ASC on this matter and that the Commission need not act unless there is an irreconcilable conflict. We

[2] All satellite and earth station licensees requiring the use of terrestrial interexchange facilities to be leased from the terrestrial carrier, will, of course, be required, under Section 214 of the Communications Act, to obtain appropriate authorization. Applications for such facilities will each be evaluated within the parameters and objectives of the *Second Report and Order* and our *Memorandum Opinion and Order* of December 21, 1973 in Docket No. 16495.

believe that at this stage, and in keeping with the concept of end-to-end service, the question of what terminal facilities, if any, should be provided by the Bell System as part of the local loop facilities should be left to further negotiations between the parties. We see no need to impose any rigid conditions at this time with regard thereto. Thus, we shall not require that the initial tariffs of AT&T include an offer of terminal facilities. If negotiations should result in the Bell System offering such terminal facilities or further action by the Commission establishes a requirement therefor, the tariffs can be changed to reflect such offer.

INTERCONNECTION CONDITIONS RE NON-CARRIER LICENSEES

24. AT&T proposes to accommodate the needs of non-carrier domestic satellite earth stations by providing the "entire spectrum of services and extensive interconnection provisions contained in AT&T's tariff offerings." The company also states that where conditions arise that are unique to satellite operations, AT&T is prepared "when appropriate" to consider tariff revisions to accommodate such circumstances.

25. The General Electric Company (GE) contends that these proposals of AT&T are patently inadequate for two principal reasons: (1) AT&T interprets its present tariffs in a manner that is so restrictive as to make it impossible for GE to interconnect on any "reasonable" basis and (2) AT&T imposes certain "policies" or "practices" with respect to interconnection that are not in the tariffs, and that these also will unduly restrict GE's interconnection with Bell facilities.

26. With respect to GE's first point, the contention is made that interconnection of Bell's facilities at GE's earth station will not be made by AT&T unless all channels of a satellite system are used to originate or terminate communications at the earth station premises where interconnection takes place and that interconnection at the earth station will be made by Bell only if PBX switching equipment is used as the point of interconnection. However, we do not construe AT&T's tariffs as imposing these particular requirements. Accordingly, we construe Bell's present tariff provisions, subject to any needed clarification, to now permit the interconnection of Bell's facilities to a non-carrier earth station regardless of the nature of the switching equipment used at the earth station and regardless of the number of communications originating and terminating at the earth station. Accordingly, we see no need to impose any conditions on AT&T's grant with respect to these two contentions.

27. GE also contends that AT&T has not made it clear that it will provide access lines to interconnect GE's earth stations with the CCSA (Common Control Switching Arrangments) switching centers that are part of the private line services GE obtains from Bell; that AT&T has a policy, that is not reflected in its tariffs, to the effect that it will interconnect at only one earth station of GE; and that Bell will not permit GE to utilize 10 digits in passing calls from the CCSA network to the GE system. However, as we construe Bell's tariff, it will provide access lines between the earth stations of GE and the CCSA switching centers and it will interconnect its facilities at either or both switching

stations of GE. Moreover, we find no provision in Bell's tariffs that preclude the use of 10 digits in passing a call from the CCSA network to the GE satellite system and we expect Bell to accommodate that practice.

28. In view of the foregoing, we see no need to impose any further conditions on the grant to AT&T insofar as concerns interconnection with non-carrier earth stations.

29. The authorization we shall issue herein to AT&T shall not be effective unless and until we receive from AT&T its written acceptance of each of the conditions and understandings with respect to the provision of interconnection facilities by the Bell System companies as specified in paragraph 21 above.

30. Accordingly, IT IS HEREBY ORDERED That subject to the above specified conditions regarding interconnection, and the requirements and limitations prescribed by our *Second Report and Order* in Docket No. 16-495 as amended by our *Memorandum Opinion and Order* of December 21, 1972, the above captioned applications ARE GRANTED and American Telephone and Telegraph Company IS AUTHORIZED to construct the earth stations as specified herein in conformity with the specifications and parameters set forth in the construction permits.

31. IT IS FURTHER ORDERED that construction of the earth stations shall be completed in accordance with the technical specifications listed in the construction permits, no later than 18 months after the date of issuance of this authorization and that failure to complete construction within such time period shall result in automatic forfeiture of this authorization unless such construction period is extended by the Commission for good cause shown.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Acting Secretary.*

F.C.C. 73R-315

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of	
AZALEA CORP., MOBILE, ALA.	Docket No. 17555 File No. BP-17340
WGOK, INC., MOBILE, ALA.	Docket No. 17556 File No. BP-17398
MOBILE BROADCAST SERVICE, INC., MOBILE, ALA.	Docket No. 17558
For Construction Permits	File No. BP-17478

ORDER

(Adopted September 4, 1973; Released September 5, 1973)

BY THE REVIEW BOARD:

1. The Review Board having under consideration the motion filed on August 31, 1973, by Azalea Corporation, for a one-day extension of time to and including September 4, 1973, within which to file responses to the exceptions to the Initial Decision (FCC 73D-34, released June 21, 1973), filed by the Broadcast Bureau, Azalea Corporation and W.G.O.K., Inc., on July 23, 1973;

2. IT APPEARING, That counsel for the other parties have indicated to petitioner their consent to a grant of the relief requested;

3. IT IS ORDERED, That the motion for a one-day extension of time IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Acting Secretary.*

F.C.C. 73R-322

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of BISBEE BROADCASTERS, INC., BISBEE, ARIZ.	Docket No. 19754 File No. BPH-7873
WRYE ASSOCIATES, BISBEE, ARIZ. For Construction Permits	Docket No. 19755 File No. BPH-7944

MEMORANDUM OPINION AND ORDER

(Adopted September 11, 1973; Released September 14, 1973)

BY THE REVIEW BOARD:

1. By Order released June 5, 1973, FCC 73-586, 38 FR 15380, published June 11, 1973, the Commission designated the above-captioned mutually exclusive applications for hearing and specified, *inter alia*, staffing and limited financial issues against Wrye Associates (Wrye). Now before the Review Board for consideration is a petition to enlarge issues, filed on June 26, 1973, by Bisbee Broadcasters, Inc. (Bisbee), requesting financial, site availability, 1.65 and lack of candor issues against Wrye, as well as a request for leave to file a reply and reply to opposition, filed on August 6, 1973, by Bisbee.[1] [2]

2. First, with respect to petitioner's request for leave to file a reply, Section 1.45 of the Commission's Rules requires that replies to oppositions be filed within five days after the time for filing oppositions has expired. Although the Board denied Bisbee's request to defer the filing of its reply by Order released July 30, 1973, FCC 73R-277, petitioner now asks that the Board accept its reply pleading, filed more than two weeks after the expiration of the time limit set forth under Section 1.45. Bisbee's *only* explanation for the delay is that it was awaiting the Board's action on its request for deferment. The board is of the view that this does not constitute good cause for filing a late reply. To grant the request would, in effect, allow petitioner to obtain the very relief which we denied. Therefore, since no good cause has been shown for filing the untimely reply, the Board will deny petitioner's request [3] and dismiss its reply. Consideration of Bisbee's petition to enlarge issues will be limited to the original petition, Wrye's response, and the Bureau's opposition.

[1] The Review Board also has before it for consideration: (a) response and supplement thereto, filed on July 9, 1973 and July 19, 1973, respectively, by Wrye; (b) Broadcast Bureau's opposition filed July 11, 1973.

[2] Wrye's supplemental response cures its originally defective response by including a proper verification (see Section 1.52 of the Commission's Rules) and accompanying affidavit (see Section 1.229(c)). Since there is no opposition, the Board will accept the supplemental response without further comment.

[3] *Dowric Broadcasting Co., Inc.*, 37 FCC 2d 628, 25 RR 2d 576 (1972).

3. In its petition to enlarge issues, Bisbee first alleges that Wrye's financial proposal has not provided for costs to be incurred in transmitting its proposed signal from its studio to antenna site. In response, Wrye alleges that such costs are included in its financial proposal under "line charges" and that, in any event, this matter can be explored at the hearing under the existing financial issue. While the Board does not agree that this matter is encompassed within the existing issue,[4] we will nevertheless deny petitioner's request. Although Bisbee may reasonably have not considered such costs to have been included in the item labeled "line charges," we have no reason to doubt the explanation that these costs have been included under this item, and Wrye's allocation of $600 for such expenses does not, standing alone, appear unrealistic. Therefore, exploration of this matter at the hearing is not warranted. See *Radio General, Inc.*, FCC 73R-272, — FCC 2d ——, RR 2d —— (1973).

4. Petitioner's additional requests for financial as well as 1.65, lack of candor and site availability issues all relate to the construction or location of Wrye's main studio. In the original application, Wrye specified its studio location as West Blvd. at No. City Limits, Bisbee, Arizona. The applicant also represented that the funds from its Huntsville real estate would be used to purchase property *in* Bisbee and that the studio would be adjacent to the living quarters. In an amendment dated December 18, 1972, the Wryes represented that they had sold their real estate in Huntsville and that the proceeds "have been utilized to purchase real estate of similar value in Bisbee, and the living quarters with contiguous main studios, control room and office for the FM broadcast station *are* under construction." (Emphasis supplied.) Petitioner alleges, however, that the Wryes have purchased land *outside* the Bisbee city limits which has restrictive covenants against conducting business on the premises; that Wrye has not complied with Section 1.65 of the Commission's rules by reporting the changed studio location; and that the failure to do so is sufficient to warrant the addition of a lack of candor issue. In addition, petitioner maintains that Wrye has not shown sufficient funds for constructing the studio either on the purchased real estate or at the West Blvd. location and that the commenced construction of a studio prior to the issuance of a construction permit violates Section 319 of the Communications Act. In response, Wrye maintains that (1) petitioner has erroneously identified the real estate it purchased and that the alleged restrictions do not apply; (2) that the December 18 amendment was in error in that their living quarters have not yet been modified to include a studio; (3) that the equity in their present real estate is sufficient to purchase land at the specified West Blvd. site if necessary; and (4) that it has not amended its studio site location because of difficulties in construction encountered at the location and therefore West Blvd. and North City Limits is still the intended studio location. Under these circumstances, Wrye urges, neither a 1.65 nor lack of candor issue is warranted. The Broadcast Bureau opposes addition of any of the requested issues, al-

[4] The Commission specified a limited financial issue related to Wrye's staffing proposal, the cost of a comparative hearing and the source of certain additional funds needed by the applicant.

leging that Bisbee has failed to comply with the requirements of Section 1.229(c) of the Commission's Rules.[5]

5. Although the amendment submitted by Wrye has generated some confusion, it appears from the pleadings that Wrye's specified studio location has remained unchanged, and that, while there was at one time some intention to utilize a different site, the original proposal was never abandoned for a 30 day period. Moreover, petitioner's assertions that, in light of Wrye's real estate purchase and premature construction, it might not have sufficient funds to purchase the original site, as well as the contention that the original site may not be available, are speculative and lack the necessary specificity required by Section 1.229 of the Rules.[6] With respect to the requested lack of candor issue, petitioner has made no showing that Wrye has reason to or, in fact, did attempt to deliberately conceal the real estate transaction; therefore, a lack of candor issue is clearly unwarranted. See *Southland Inc.*, 37 FCC 2d 125, 25 RR 2d 186 (1972). Finally, as to the alleged premature construction, Wrye has explained that the wording of the amendment from which the allegation stems was in error, and, in the absence of more specific allegations to support this request, we do not believe that an evidentiary inquiry is warranted.

6. Accordingly, IT IS ORDERED, That the request for permission to file pleading, filed August 6, 1973, by Bisbee Broadcasters, Inc. IS DENIED, and the pleading attached thereto IS DISMISSED; and IT IS FURTHER ORDERED, That the petition to enlarge issues, filed June 26, 1973, by Bisbee Broadcasters, Inc., IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Acting Secretary.*

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[5] The only attached affidavit is that of Howard Waterhouse who merely states that he has read the attached petition and it is true and correct.

[6] If Wrye's showing under the existing financial issue reveals a substantial change in Wrye's financial posture, an appropriate request for enlargement would be entertained.

F.C.C. 73-942

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMENDMENT OF PART 74, SUBPART H, OF THE COMMISSION'S RULES AND REGULATIONS ON TELEVISION BROADCAST BOOSTER STATIONS	Docket No. 19756

REPORT AND ORDER

(Adopted September 11, 1973; Released September 14, 1973)

BY THE COMMISSION: COMMISSIONER ROBERT E. LEE ABSENT.

1. As a result of our Task Force study on re-regulation of broadcasting, we issued a Notice of Proposed Rule Making, released June 5, 1973 (FCC 73-590), looking toward deletion of Subpart H, concerning Television Broadcast Booster Stations, Part 74 of our Rules and Regulations. Closing dates for comments and reply comments were July 16 and July 26, 1973, respectively. Publication was made in the Federal Register on June 11, 1973 (38 Fed. Reg. 15374).

2. Rules implementing the service of television broadcast booster stations were promulgated by Report and Order in Docket No. 11331, adopted May 20, 1960. 20 Pike and Fischer R.R. 1505. Such stations are essentially co-channel amplifying transmitters by which the licensee of a UHF television broadcast station may boost its signal where the strength of such signal is low within the station's theoretical Grade A contour.

3. Deletion of Subpart H was proposed on the ground that it serves no useful purpose. There are no stations authorized under this subpart. Construction permits were granted for two such stations in 1960 and 1961, and each was cancelled at the request of the permittee after two-and-one-half months. No licenses were ever issued. No applications have been filed in this service since 1961. It appears unlikely that there would be any requests for television booster stations in the future, inasmuch as conventional translators are available and more practical.

4. No comments were filed in this proceeding.

5. Lack of interest in or utilization of this service appears to have resulted from at least two practical considerations. First, inherent in the co-channel operation of TV boosters are technical difficulties of avoiding undesirable interference. Second, the use of TV translators has been a satisfactory and preferable alternative.

6. We conclude that Subpart H serves no useful purpose and that its deletion from our Rules and Regulations would be in the public interest.

7. In view of the foregoing, IT IS ORDERED, That, effective October 26, 1973, Part 74 of the Commission's Rules and Regulations IS AMENDED by deleting the provisions of Subpart H in its entirety (§§ 74.801–74.884) and designating it as Reserved.

8. Authority for the action taken herein is contained in Sections 4(i) and 303(j) and (r) of the Communications Act of 1934, as amended, and Sections 1.425 and 1.427(a) of the Commission's Rules and Regulations.

9. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Acting Secretary.*

F.C.C. 73-904

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re
PETITION OF BOSTON BROADCASTERS, INC.
For Declaratory Ruling

DECLARATORY RULING

(Adopted September 6, 1973; Released September 13, 1973)

BY THE COMMISSION: COMMISSIONER ROBERT E. LEE ABSENT; COMMISSIONER REID CONCURRING IN THE RESULT.

1. Boston Broadcasters, Inc., is the permittee of Station WCVB–TV, Channel 5, Boston, Massachusetts. Until March 19, 1972, Station WHDH–TV operated on Channel 5 in Boston. Thereafter, WCVB–TV commenced operation with technical facilities substantially the same as those previously licensed to WHDH–TV. Boston Broadcasters, Inc., requests a ruling that it is to be considered significantly viewed for purposes of cable television system carriage in those counties where WHDH–TV would have been significantly viewed pursuant to Section 76.54(a) of the Rules.[1] Issuance of the following declaratory ruling is requested:

> "Significant viewing" attributed to a particular station in Appendix B to the February 2, 1972 Report and Order in Docket No. 18397 shall be attributed to any subsequently authorized station utilizing the same channel in the same city, and operating with substantially the same technical facilities as the listed station.

2. In support of the requested ruling it is urged that WCVB–TV's position is not materially different from that of an existing station that made an insignificant change in its technical facilities or that of an existing television station that acquired its authorization by assignment after Appendix B to the *Cable Television Report and Order*[2] was adopted.

3. We agree with Boston Broadcasters, Inc.'s interpretation of the rules and that such a ruling is in conformity with the objectives and policy enunciated in the *Cable Television Report and Order*, paragraphs 85–86, and in the rule itself. We will, therefore, grant the

[1] Section 76.54(a) states:
"(a) Signals that are significantly viewed in a county (and thus are deemed to be significantly viewed within all communities within the county) are those that are listed in Appendix B of the *Memorandum Opinion and Order on Reconsideration of the Cable Television Report and Order* (Docket 18397 *et al.*), FCC 72–530." Stations are entitled to request carriage on cable television systems in those areas where they are found to be significantly viewed.

[2] 36 FCC 2d 141 (1972). Appendix B was modified in some respects not here relevant on reconsideration of the *Cable Television Report and Order*, 36 FCC 2d 326 (1972).

requested ruling and adopt the language as proposed by Boston Broadcasters, Inc. (paragraph 1, above).[3]

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Acting Secretary.*

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[3] Subsequent to the filing of this declaratory ruling petition, the same issue was put in question in connection with several certificate of compliance applications. In connection with CAC's 1133–1137 for Norwich, Lisbon, Franklin, Sprague, and Bozrah, Connecticut; Boston Broadcasters incorporated by reference its petition and urged that the requested certificate not be granted until its carriage rights had been resolved. Cable Video, Inc., the applicant in these communities had not proposed carriage of WCVB–TV. In CAC–656, International Telemeter of New Bedford, New Bedford, Massachusetts, proposed carriage of WCVB–TV as a significantly viewed signal. The request was opposed by WGAL Television, licensee of Television Station WTEV, New Bedford, which argued as follows: "ITNB is incorrect in asserting . . . that WHDH–TV is 'now WCVB–TV.' WCVB–TV is not operating under any sort of continuation of WHDH–TV's license, and there was no mere change of call signs. WCVB–TV is a totally new station, with a network affiliation *different* from that of WHDH–TV and with its own new non-network programming. WCVB–TV cannot, therefore, be carried on a New Bedford CATV system (footnote omitted)." We have reviewed the arguments raised in these certificate of compliance proceedings but are not persuaded that the WCVB–TV's position is incorrect. We see no reason why changes in a station's ownership should change the availability of the station's signal for cable television carriage purposes, so long as the technical facilities involved remain substantially the same.

F.C.C. 73-935

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
LIABILITY OF BEVERLY E. BROWN, LICENSEE OF
RADIO STATION KGAS, CARTHAGE, TEX.
For Forfeiture

MEMORANDUM OPINION AND ORDER

(Adopted September 6, 1973; Released September 11, 1973)

BY THE COMMISSION: COMMISSIONER ROBERT E. LEE ABSENT.

1. The Commission has under consideration (1) its Notice of Apparent Liability for forfeiture dated February 9, 1972, and (2) the licensee's response, dated March 10, 1972 to the Notice of Apparent Liability.

2. Station KGAS is licensed to operate with power of 1,000 watts during daytime hours. Average sunrise time as set forth in the license is 7:00 a.m. Central Standard Time (CST) for February. The station also has a Presunrise Service Authority permitting operation with power of 500 watts from 6:00 a.m. local time to the specified sunrise times.

3. The Notice of Apparent Liability in this proceeding indicated that Beverly E. Brown, the licensee of Station KGAS, was subject to an apparent liability for forfeiture in the amount of one thousand dollars ($1,000) for willful or repeated failure to observe the terms and provisions of the station authorization and violation of Sections 73.52(a) and 73.67(a)(3) of the Commission's Rules, in that the station was operated during daytime hours and presunrise hours with power in excess of that authorized and that the station continued operation by remote control when the remote control equipment was defective. As set forth in the Notice of Apparent Liability, the period during which the remote control equipment was defective was from March 27, 1971 to April 23, 1971, and the details of the overpower operation during the month of February, 1971 were as follows:

Daytime:
February 17, 1971—The power was 5 percent above licensed power at 7:27 a.m. Minimum power for the rest of the day was 9.5 percent above licensed power.
February 27, 1971—The station was within power limits at 7:31 a.m. and 7:57 a.m. The rest of the day the power was within 9.5 percent above and 23.8 percent above licensed power.
At no other time in February was the daytime power less than 9.5 percent above licensed power or greater than 31 percent above licensed power. The majority of the time the power was within 9.5 percent above and 23.8 percent above licensed power.
Presunrise:
On each day (except February 26 and at 6:00 a.m. on February 12) at 6:00 a.m. and continuing through 6:30 a.m. CST there was overpower operation

ranging during this month from 8.2 percent to 56 percent above authorized power.

Additionally the station was operated on March 23, 1971 with power of 1130 watts, or 13 percent above licensed power, during daytime hours.

4. In response to the Notice of Apparent Liability the licensee acknowledges that the station was operated with power of 1130 watts during the daytime on the date of inspection (March 23, 1971), but fails to make any statement as to the February 1971 overpower operation. The licensee generally places the blame on misplaced confidence and carelessness in relying on "an incompetent engineer." In regard to the failure to cease operation by remote control when the remote control equipment became defective, the licensee states:

> During the period of Violation (March 23, 1971 to April 23, 1971) while waiting for the arrival and installation of the gear assembly for the M4703 Motor which controls the raising and lowering of power, we could not station a properly licensed operator at the transmitter for the entire broadcast day without a severe handicap in the operation of the station because of the shortage of licensed personnel available to us. There was no danger that the station would have been operated during this period in violation because the remote control metering equipment was all operating properly. If at anytime an adjustment of power had been necessary the operator could have driven to the transmitter site and made the adjustment in five minutes or less. To have had a properly licensed operator on duty at the transmitter site would have required that the licensee remain on duty fulltime at the studio which in our judgment was impractical with the community obligations of service and selling I am required to do to keep the station in operation.

5. The licensee requests that the amount of forfeiture be reduced or remitted in its entirety, stating that the Carthage, Texas market had a 1970 population of less than 5,500 and that payment of a $1,000 fine would place a hardship on the station's operating capital and severely jeopardize potential profits in 1972.

6. We find that the failure to abide by the terms and provisions of the station authorization and the violations of Sections 73.52(a) and 73.67(a)(3) of the Commission's Rules occurred as above set forth and were repeated. Having found that the violations were repeated, it is unnecessary that, we make an additional finding as to willfulness. *Paul A. Stewart*, FCC 63–411, 25 RR 375. It is well established that licensees are expected to know and comply with Commission requirements and are responsible for the acts and omissions of their employees. *J. C. Johnson, tr/as Lowndes Broadcasting Co.*, 23 FCC 2d 91 (1970); *International Broadcasting Corp.*, 19 FCC 2d 793 (1969). The licensee's financial condition was considered prior to the adoption of the Notice of Apparent Liability in these proceedings.

7. In view of the foregoing, IT IS ORDERED, That Beverly E. Brown, the licensee of Radio Station KGAS, Carthage, Texas, FORFEIT to the United States the sum of one thousand dollars ($1,000) for repeated violations of Sections 73.52(a) and 73.67(a)(3) of the Commission's Rules and failure to abide by the terms and provisions of the station authorization. Payment of the forfeiture may be made by mailing a check or similar instrument to the Commission drawn to the order of the Federal Communications Commission. Pursuant to Section 504(b) of the Communications Act of 1934, as amended, and

Section 1.621 of the Commission's Rules, an application for remission or mitigation of forfeiture may be filed within thirty (30) days of the date of receipt of this Memorandum Opinion and Order.

8. IT IS FURTHER ORDERED, That the Secretary of the Commission send a copy of this Memorandum Opinion and Order by Certified Mail—Return Receipt Requested to Beverly E. Brown, the licensee of Station KGAS, Carthage, Texas.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Acting Secretary.*

F.C.C. 73-903

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Cease and Desist Order To Be Directed Against COLUMBIA TELEVISION CO., INC., PENDLETON, OREG.	Docket No. 19809 File No. CSC-2

ORDER TO SHOW CAUSE

(Adopted September 6, 1973; Released September 12, 1973)

BY THE COMMISSION: COMMISSIONER ROBERT E. LEE ABSENT.

1. On April 14, 1972, Apple Valley Broadcasting, Inc., licensee of Station KVEW, Kennewick, Washington, filed a "Petition for Order to Show Cause" directed against Columbia Television Company, Inc. (Columbia), operator of a cable television system at Pendleton, Oregon, for alleged violation of Section 76.57 of the Commission's Rules.[1] On May 10, 1972, Columbia filed an "Opposition to Petition for Order to Show Cause," and on May 26, 1972, Apple Valley filed a "Reply to Opposition to Petition for Order to Show Cause."

2. Pendleton, Oregon, is located outside of all television markets. Columbia's twelve channel system currently carries the following television signals:

KATU (ABC)—Portland, Oregon
KTVR (ABC, NBC)—LaGrande, Oregon
KOIN-TV (CBS)—Portland, Oregon
KEPR-TV (CBS)—Pasco, Washington
KNDU (NBC)—Richland, Washington
KREM-TV (ABC)—Spokane, Washington
KGW-TV (NBC)—Portland, Oregon
KXLY-TV (CBS)—Spokane, Washington

[1] Section 76.57 of the Rules provides that,

"A cable television system operating in a community located wholly outside all major and smaller television markets, as defined in § 76.5, shall carry television broadcast signals in accordance with the following provisions:

(a) Any such cable television system may carry or, on request of the relevant station licensee or permittee, shall carry the signals of:

(1) Television broadcast stations within whose Grade B contours the community of the system is located, in whole or in part;

(2) Television translator stations with 100 watts or higher power serving the community of the system and, as to cable systems that commence operations or expand channel capacity after March 30, 1972, noncommercial educational translator stations with 5 watts or higher power serving the community of the system. In addition, any cable system may elect to carry the signal of any noncommercial educational translator station;

(3) Noncommercial educational television broadcast stations within whose specified zone the community of the system is located, in whole or in part;

(4) Commercial television broadcast stations that are significantly viewed in the community of the system. See § 76.54.

(b) In addition to the television broadcast signals carried pursuant to paragraph (a) of this section, any such cable television system may carry any additional television signals.

KOAP–TV (Educ.)—Portland, Oregon
KHQ–TV (NBC)—Spokane, Washington
KVEW (ABC)—Kennewick, Washington

KVEW is a satellite of KAPP, Yakima, Washington, and places a predicted Grade B contour over Pendleton.

3. This dispute proceeds from Columbia's unusual system of subscription rates and services. Under a 1970 amendment to its franchise, Columbia's subscribers may choose between receiving five signals on the "low-band" portion of the system or paying an additional seventy cents per month for six other signals on the "high-band" portion. Approximately three-quarters of Columbia's subscribers—i.e., 3,061 of 4,424—currently pay the surcharge for high-band service. Columbia carries KVEW on the high-band portion and KATU, also an ABC affiliate, on the low-band portion. When KVEW is entitled to network program exclusivity, however, Columbia substitutes its signal for KATU's. KVEW non-network programming thus is unavailable to the 1,363 subscribers who are not willing to pay the high-band surcharge.

4. We find this practice to be in violation of Section 76.57, which requires a cable television system located outside of all markets to carry the signal of any television station which places a predicted Grade B contour over its community. In order to "carry" a signal, a cable television system must make it available to all subscribers, regardless of their financial relation with the system. We thus reject Columbia's argument that Section 76.57 requires a cable television system only to provide a subscriber with potential "access" to a signal. In paragraph 78, *Cable Television Report and Order*, we noted that one purpose of the mandatory carriage rules is "to assure that 'local' stations are carried on cable television systems and are not denied access to the audience they are licensed to serve . . ." We never intended to suggest that a cable television system could provide "access" by giving its subscribers an extra-cost option, as Columbia would have it. In fact, we immediately went on to state that a second purpose of the rules was to "ameliorate the competitive impact of 'distant' signal carriage"—a goal which hardly is fulfilled where, as here, distant signals are available to all subscribers and a local signal only to some.

5. We also find unpersuasive Columbia's argument that high-band carriage of KVEW's non-network programming has no economic impact, which is based on the theory that the station does not carry local Pendleton advertisements. Columbia has not shown that Kennewick, Washington advertisers do no business with Pendleton, Oregon television viewers. Moreover, the rules do not provide for waivers upon showings of lack of economic impact, and we never have indicated any disposition to grant such waivers. Indeed, if Columbia were applying for a waiver, its proper procedural vehicle would be a petition for special relief, not a defense to a cease and desist order.

6. To be sure, the City of Pendleton has a real concern in this, and has made some definite decisions as to this matter. In a May 2, 1972, resolution addressed to this Commission, the Pendleton City Council recites that in 1967 it "directed" Columbia "to bring two Portland television stations onto their 5 channel low-band system, in return

for a rate increase and enlargement of the system to add 7 high-band channels . . ." While we understand the City's interest in its citizens' programming desires, we cannot allow it to interfere with Federal regulatory goals. We will, therefore, issue the requested Order to Show Cause.

Accordingly, IT IS ORDERED, That pursuant to Sections 312 (b) and (c) and 409(a) of the Communications Act of 1934, as amended, 47 U.S.C. 312 (b) and (c), and 409(a), Columbia Television Company, Inc.; IS DIRECTED TO SHOW CAUSE why it should not be ordered to cease and desist from further violation of Section 76.57 of the Commission's Rules and Regulations on its cable television system at Pendleton, Oregon.

IT IS FURTHER ORDERED, That Columbia Television Company, Inc., IS DIRECTED to appear and give evidence with respect to the matters described above at a hearing to be held at Washington, D.C., at a time and place before an Administrative Law Judge to be specified by subsequent Order, unless the hearing is waived, in which event a written statement may be submitted.

IT IS FURTHER ORDERED, That Apple Valley Broadcasting, Inc.; City of Pendleton; and Chief, Cable Television Bureau ARE MADE parties to this proceeding.

IT IS FURTHER ORDERED, That the Secretary of the Commission shall send copies of this Order by Certified Mail to Columbia Television Company, Inc.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Acting Secretary.*

F.C.C. 73-958

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of the Applications of COMMUNICATIONS SATELLITE CORPORATION For Authority to Construct Four Communications Satellites To Be Used as Part of a Domestic Communications Satellite System of A.T. & T. In the Matter of Petitions of Communications Satellite Corporation and Comsat General Corporation for Substitution of Comsat General as Party in Interest	Files Nos. 10-DSS-P(4)-71, 17-DSE-P-73, 18-DSE-P-73

MEMORANDUM OPINION, ORDER AND AUTHORIZATION

(Adopted September 12, 1973; Released September 12, 1973)

BY THE COMMISSION: COMMISSIONER ROBERT E. LEE ABSENT; COMMISSIONERS JOHNSON AND REID CONCURRING IN THE RESULT.

1. The Commission has before it the above-captioned applications of the Communications Satellite Corporation (Comsat) for authorization to construct, own and operate four communications satellites and two telemetry, tracking and control (TT&C) stations. Three of the satellites will be placed in orbit and the fourth will be held on the ground as a spare. The two TT&C stations will be located at Southbury, Connecticut, and Santa Paula, California. The applications for the satellites were filed November 19, 1970 and amended on March 8 and July 24, 1973. The applications for the TT&C stations were filed March 8, 1973 and amended last on July 24, 1973. On May 18, 1973, Comsat filed a petition asking for substitution of its newly formed subsidiary corporation, Comsat General Corporation (Comsat General), as the party in interest in the applications and amendments of Comsat for these satellites and TT&C stations. A complimentary petition was also filed on May 18, 1973 by Comsat General for approval of such substitution. These petitions for substitution were filed purportedly to comply with the requirements of paragraph 26 of the Commission's *Second Report and Order* and paragraph 45 of the *Memorandum Opinion and Order* of December 21, 1972, by which the Commission required Comsat to form a separate corporate subsidiary to engage in any domestic satellite venture and in any other non-Intelsat related ventures.

2. Comsat proposes to use these satellites and TT&C stations for the provision of communications services to the American Telephone and Telegraph Company (AT&T) for a period of seven years under a lease agreement entered into between the parties on February 28, 1973.

104-009—73——3

3. The satellites proposed by Comsat will have 24 transponders and are similar in design to Intelsat IV. They will be launched by Atlas-Centaur launch vehicles. They will receive in the 6 GHz band and transmit in the 4 GHz band, providing a total of about 14,440 two-way voice grade circuits each. The spin-stabilized satellites will have one pair of vertically polarized, transmit-receive antennas to cover the 48 contiguous states and Alaska. They will also have one pair of horizontally polarized, transmit-receive antennas to cover the 48 contiguous states and Hawaii and Puerto Rico. Satellites, the first of which will be ready for launch in 30 months, are designed for seven-year lifetime and will carry an 18 and 30 GHz experimental package.

4. The Southbury and Santa Paula sites will have one 42-foot diameter antenna and one 32-foot diameter antenna for telemetry, tracking and command. Central control will be maintained from a center in Washington, D.C.

5. Revised estimated costs of the satellites contained in a letter from Comsat General dated July 18, 1973, will be about $71.1 million and launch costs about $97.4 million. Other program costs will bring the total investment to $180.6 million.

6. There are no unresolved frequency conflicts. Upon consideration of the radiation hazard and other environmental factors set forth in the instant applications, we are satisfied that construction of these TT&C earth stations will comply with the policies set forth in the Commission's *Memorandum Opinion and Order* of December 21, 1972 in Docket No. 16495 (38 FCC 2d 665, 703–704).

7. The showings made in connection with the subject applications and petitions would support a grant of construction authority except for one major failing. In this latter respect, we are unable to issue the requisite construction authorizations at this time, or to grant the subject petitions for substitution, because we are unable to find that the arrangements submitted for our approval with respect to the establishment of a separate corporate subsidiary by Comsat in the form of Comsat General will achieve the policy objectives contemplated by our *Second Report and Order* in Docket 16495. We will now discuss this phase of the problem and the interim action we will authorize pending the resolution thereof.

PROPOSED FINANCING OF COMSAT GENERAL

8. In its *Second Report* in the domestic satellite proceedings.[1] the Commission stipulated that Comsat would be required to establish a separate corporate subsidiary to engage in any domestic satellite venture. It did not impose specific requirements setting forth how such a subsidiary should be structured and financed but indicated that Comsat's proposal in this regard would be subject to ultimate Commission approval. Comsat has established a subsidiary, Comsat General Corporation (Comsat General), and has petitioned the Commission to delete Comsat as the party in interest in its applications and amendments for authority to construct space and earth segment facilities to be used in providing services to AT&T and to assign to Comsat

[1] 35 FCC 2d 844 at 853 (1972).

General all of Comsat's interests in such filings as well as Comsat's rights and responsibilities under the February 28, 1973 agreement under which the capacity of the space segment facilities is to be provided to AT&T.[2]

9. In connection with its petition, Comsat has submitted a proposed method of financing the activities of Comsat General. First, it proposes to enter into a guarantee agreement through which it will underwrite the financial obligations associated with specific contracts entered into by Comsat General for the procurement of hardware and services necessary to establish the proposed facilities and through which Comsat will transfer, on an as-needed basis, sufficient funds to meet such financial obligations. This agreement, it is alleged, will serve as an inducement to third parties to enter into contractual arrangements with Comsat General and will be binding upon Comsat with respect to any contractual obligations of Comsat General that are included in an attachment to the agreement.[3] It is not limited to a specific number of years and there are no specified terms for terminating it. Thus, the time frame within which the obligations of Comsat are to be effective is coincident with the specific contractual obligations attached to the agreement. Comsat indicated in its filings in this matter that Comsat General will not be required to repay Comsat, nor pay interest, for funds advanced pursuant to the guarantee agreement and that only when surplus cash is generated by Comsat General's operations, will a decision be made as to the use to which such cash is to be put, that is, whether it will be returned to Comsat or reinvested by Comsat General. Finally, Comsat has stated that it is not contemplated that Comsat General will seek outside financing, either debt or equity.

10. Comsat has also submitted a 3-year "worst case" cash flow analysis for Comsat under the assumption that all programs other than Comsat's Intelsat activities are transferred to Comsat General and Comsat underwrites all of Comsat General's contractual obligations as outlined above. This analysis indicates that at year-end 1975 there would be a $17.1 million cash requirement upon Comsat beyond then-estimated available cash resources. Comsat contends that this cash requirement would be offset by a $39 million positive cash flow expected to be generated by Comsat General as well as the positive aspects of cash flow from Comsat's international business in the 1976–77 time frame. In any event, Comsat alleges that this requirement could be met by short-term bank loans. On the basis of its analysis, Comsat contends that it will be in a strong financial position to cope with any cash requirement that could reasonably be expected to arise in connection with its Intelsat activities and that even if the cash requirements turn out significantly greater than their "worst case" assumptions, Comsat will have considerable leverage for raising additional cash because of its 100% equity capital position.

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[2] Comsat has also tendered for filing an amendment to its applications for authority to construct both the space segment and the earth station facilities to be used to provide maritime services to the Navy and other users, substituting Comsat General for Comsat as the applicant. In addition, Comsat has applied for authority to transfer to Comsat General the partial waiver of construction authority it received allowing it to proceed with the construction of such facilities.

[3] The agreement specified that it can be extended by the mutual agreement of Comsat and Comsat General to include any specific contractual obligation of Comsat General whether undertaken on its own or assumed from Comsat.

DISCUSSION

11. In paragraph 116 of the staff recommendation in the domestic satellite proceedings,[4] the establishment of a separate subsidiary was recommended as a means of limiting Comsat's liability for loss due to a domestic satellite venture. It was also suggested that the Commission, pursuant to its powers under Section 201(c)(8) of the Satellite Act, limit the amount of the equity capital which Comsat had acquired for Intelsat purposes, that Comsat could use in financing such a subsidiary in order to insure that Comsat's investment in such a subsidiary was consistent with the objectives of the Satellite Act. This recommendation was premised on the idea that from the beginning Comsat should structure its relationship with its subsidiary so as to demonstrate that Comsat's obligations would not affect its ability to discharge its Intelsat responsibilities regardless of the outcome of the domestic satellite venture or other activities of its subsidiary. Since, in general, the Commission adopted the staff recommendation in this respect, it is fair to say that the Commission's objective in requiring the establishment of a separate corporate entity was not primarily designed to ease administrative and regulatory problems but to minimize the financial liability and risks of Comsat for such a venture and to insure that whatever happened to Comsat General, Comsat would retain adequate resources to fulfill its responsibilities under the Communications Satellite Act of 1962 as the designated U.S. entity responsible for furnishing international satellite communications facilities and services through its participation in Intelsat. It does not appear to us that the proposal submitted for the financing of Comsat General will further the Commission's objective or insure that regardless of what befalls Comsat General, Comsat will retain the requisite financial posture to carry out these statutory obligations. It should be emphasized that we are not considering a mere academic issue but rather the practical way to limit Comsat's risks and obligations with respect to ventures which could total several hundred million dollars. The July 25, 1973 letter from Comsat, shows total capital expenditures of $290 million through 1976 for the Navy/Maritime, AT&T, CML and proposed Aeronautical systems. In addition, although the cash flow analysis given as Exhibit 2 to Comsat's letter makes no allowance for the standard expenses, such as operations and maintenance, general and administrative, and research and development, such expenses will occur and under the present proposal could be borne entirely by Comsat. Our estimate of these expenses through 1976, without allocation of prior expenses, shows that these costs could reach in excess of an additional $100 million. Since the estimated net operating revenues through 1976 as shown in Comsat's cash flow analysis (Exhibit 2 to the July 25, 1973 letter) amounts to less than $60 million, it can be anticipated that Comsat General's operation will require something significantly more than the $230 million now estimated.

12. Comsat has set up Comsat General as a separate corporate entity to which it intends to transfer all its non-Intelsat activities. This entity, however, as now structured, will be relying upon Comsat

[4] 34 FCC 2d 1, 58 (1972).

for financial support and backing particularly during its critical initial stages and for an undetermined time thereafter. There is no provision in Comsat's proposal to furnish Comsat General with a specified amount of capital or to follow a course which would at some point assure that Comsat General will be in a position to establish its financial independence and to assume for itself the risks associated with the establishment of the new satellite systems it proposes to operate. Moreover, there is no fixed plan by which Comsat General will repay or liquidate advances made to it by Comsat and the proposed arrangements place no limit on the amount of Comsat's capital, acquired by it for participation in Intelsat, that could be advanced to Comsat General and expended on non-Intelsat activities.

13. In light of our concern for establishing a fixed limit on the financial risk the domestic and other ventures could impose on Comsat's capital structure, we find Comsat's proposal unacceptable in that the risks and obligations incurred by Comsat General will be entirely assumed by Comsat with all that implies in terms of Comsat's ability to discharge its responsibilities concerning Intelsat. We will, therefore, require Comsat to present to the Commission a plan providing for the appropriate financial independence of Comsat General in a manner which will establish realistic definitive limits on the amount of investment to be made by Comsat in Comsat General and on the liabilities, direct and indirect, undertaken by Comsat with respect to Comsat General. An acceptable plan will effectively limit the extent of Comsat's liability and insulate Comsat's Intelsat related activities so that its ability to discharge its statutory responsibilities with respect to Intelsat remains unimpaired. We would expect such a plan to allow Comsat General to obtain outside financing, either debt or equity, if that should prove necessary. Unlike standard financial arrangements between parent and subsidiary corporations, the present proposal does not give expectation that Comsat General will achieve its own financial competence. There would appear to be several acceptable methods by which Comsat General can be financed including the initial sale of an adequate amount of equity capital to be purchased by Comsat with additional financing taking the form of the sale of additional equity or debt securities or bank borrowings.[5]

14. There is one additional concern that underscores the necessity that the financial relationship between Comsat and Comsat General be appropriately structured, including proper allocation of joint and common costs. This concern stems from the importance that the various ventures of Comsat General should not be subsidized by the international operations or resources of Comsat but should be supported only within the parameters and consistent with the objectives discussed above.

15. We recognize that there is need to proceed with Comsat's proposal for the AT&T satellite system and that certain penalties with respect to the cost and timely availability of service may result if this system cannot now proceed. We shall therefore grant Comsat a partial and limited waiver pursuant to Section 319(d) of the Com-

[5] The Commission has issued proposed rules which, if adopted, would require Commission prior approval of such financing by subsidiaries of Comsat (Docket No. 19770).

munications Act of 1934 to enable construction of the proposed satellites to proceed on condition that Comsat submit to the Commission within 60 days from the release date of this decision a revised financing plan for Comsat General in accordance with the foregoing discussion. We expect that any action by Comsat during this interim period will be taken in a manner which will insure that upon approval of such a revised financing plan Comsat General could be fully substituted as a party in interest in Comsat's applications, amendments and the waiver granted herein in connection with the AT&T system and thus assume all of Comsat's rights and responsibilities with respect to the construction of the proposed domestic facilities as well as the AT&T contract. We wish to make it entirely clear that the Commission will not grant the petitions for substitution or the applications for construction authority unless and until we are fully satisfied that the revised proposed plan of financing will meet the Commission's objectives and protect the rights of all interested parties.

16. Accordingly, IT IS ORDERED, that Comsat is granted a partial and limited waiver pursuant to Section 319(d) of the Communications Act of 1934 to proceed forthwith, at its own risk, with the construction of the proposed space and earth segment facilities to be used in providing service to AT&T on condition that it submit for Commission approval, within 60 days of the release date of this decision, a proposed plan for financing Comsat General which will meet the objectives and requirements set out hereinabove.

17. IT IS FURTHER ORDERED, that if a revised plan, as set out above, is not submitted within 60 days from the release date of this decision, then the partial and limited waiver granted herein shall be void and terminated.

18. IT IS FURTHER ORDERED, that the Comsat petitions to delete itself as the party in interest in, and to assign to Comsat General all of Comsat's interest in, applications and amendments for authority to construct space and earth segment facilities to be used in providing service to AT&T, and Comsat General's petition to substitute itself as the party in interest in such applications and amendments ARE DENIED without prejudice to the filing of substitute petitions in accordance with the requirements set forth hereinabove.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Acting Secretary.*

F.C.C. 73R-324

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of	
CONGAREE BROADCASTERS, INC., WEST COLUMBIA, S.C.	Docket No. 19624 File No. BPH-7712
STATESVILLE BROADCASTING CO., INC., COLUMBIA, S.C.	Docket No. 19626 File No. BPH-7777
For Construction Permits	

APPEARANCES

Samuel Miller and *Jerrold Miller*, on behalf of Congaree Broadcasters, Inc.; *Edward Reddy*, on behalf of West Columbia Broadcasters, Inc.; *Jeffrey W. Malickson*, *William P. Bernton* and *Eugene Mallyck*, on behalf of Statesville Broadcasting Company, Inc.; and *Philip V. Permut* and *Robert W. Ross*, on behalf of the Chief, Broadcast Bureau, Federal Communications Commission.

DECISION

(Adopted September 12, 1973; Released September 17, 1973)

BY THE REVIEW BOARD: BERKEMEYER, NELSON AND PINCOCK.

1. This case is before the Review Board on exceptions filed by the parties to the Initial Decision of Administrative Law Judge Chester F. Naumowicz, Jr., released May 17, 1973 (FCC 73D-29).[1] The Presiding Judge proposes grant of Congaree Broadcasters' application under the Section 307(b) issue; this is challenged by Statesville Broadcasting; and the Bureau supports the Initial Decision. The Board heard oral argument on September 6, 1973. The Initial Decision will be affirmed. The Board's analysis of the Judge's decision in the light of the record, exceptions, briefs and related pleadings establishes that the grant to Congaree is consistent with the FM priorities as they have been interpreted by the Commission in such cases as *Nelson Broadcasting Company et al.*, 5 FCC 2d 211, 8 RR 2d 890 (1966), and *Cherokee Broadcasting Co. et al.*, 17 FCC 2d 121, 15 RR 2d 1205 (1969), and by the Board in *The News-Sun Broadcasting Co.*, 24 FCC 2d 770, 19 RR 2d 942 (1970), rev. den. 27 FCC 2d 61, 20 RR 2d 1084 (1971). Thus, the Judge's decision IS AFFIRMED.

2. Accordingly, IT IS ORDERED, That the application of Congaree Broadcasters, Inc. (File No. BPH-7712) IS GRANTED, and

[1] Statesville Broadcasting Company, Inc., filed Exceptions and a Brief on June 15, 1973; Congaree Broadcasters, Inc., filed Exceptions on June 18, 1973; and the Broadcast Bureau filed a Reply to Exceptions on June 27, 1973.

that the application of Statesville Broadcasting Company, Inc. (File No. BPH–7777) IS DENIED.

DONALD J. BERKEMEYER,
Member, Review Board,
Federal Communications Commission.

APPENDIX

RULINGS ON EXCEPTIONS

Exception No.	*Ruling*
	Statesville Broadcasting Co., Inc.
1, 2, 3, 4, 5, 8, 9	Denied as lacking in decisional significance.
6, 7, 10	Denied for the reason set forth in the initial decision and in this decision.
	Congaree Broadcasters, Inc.
1, 2, 3, 4	Denied as lacking in decisional significance.

F.C.C. 73D–29

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of	
CONGAREE BROADCASTERS, INC., WEST COLUMBIA, S.C.	Docket No. 19624 File No. BPH–7712
STATESVILLE BROADCASTING CO., INC., COLUMBIA, S.C.	Docket No. 19626 File No. BPH–7777
For Construction Permits	

APPEARANCES

Samuel Miller and *Jerrold Miller* on behalf of Congaree Broadcasters, Inc.; *Edward Reddy* (Midlen and Reddy) on behalf of West Columbia Broadcasters, Inc.; *Jeffrey W. Malickson*, *William P. Bernton* and *Eugene Mallyck* on behalf of Statesville Broadcasting Company, Inc.; and *Philip V. Permut* and *Robert W. Ross* on behalf of Chief, Broadcast Bureau, Federal Communications Commission.

INITIAL DECISION OF ADMINISTRATIVE LAW JUDGE
CHESTER F. NAUMOWICZ, JR.

(Issued May 11, 1973; Released: May 17, 1973)

PRELIMINARY STATEMENT

1. By order of the Commission released November 6, 1972, the mutually exclusive applications of Congaree Broadcasters, Inc.; West Columbia Broadcasters, Inc.; and Statesville Broadcasting Company, Inc. were consolidated for hearing. The application of West Columbia Broadcasters, Inc. was dismissed by order of the presiding Judge released February 22, 1973. The following issues remain for consideration:

1. To determine with respect to the application of Statesville Broadcasting Company, Inc.:

(a) The security required for a $100,000 bank loan from The Northwestern Bank, Statesville, North Carolina, whether the applicant and/or its principals can meet the bank's security requirements, and, therefore, whether the bank loan will be available to the applicant;

(b) Whether, in light of the evidence adduced under the preceding issue, the applicant is financially qualified.

2. To determine the areas and populations which would receive FM service of 1 mV/m or greater intensity from the respective proposals together with the availability of other primary 1 mV/m or better for FM) aural services in such areas.

3. To determine, in light of section 307(b) of the Communications Act of 1934, as amended, which of the proposals would best provide a fair, efficient and equitable distribution of radio service.

4. To determine, in the event it is concluded that a choice between applications should not be based solely on 307(b) considerations, which of the proposals would best serve the public interest.

5. To determine, in light of the evidence adduced under the preceding issues, which application should be granted.

2. The applicants published notice of hearing and notified the Commission thereof pursuant to the governing rules and statute. Conferences and hearing were held on various dates between December 4, 1973 and April 4, 1973. The record was closed by order of the presiding Judge released April 19, 1973. The filing of proposed findings of fact was concluded by April 30, 1973.

FINDINGS OF FACT

Issue No. 1—Financial

3. Statesville has a commitment from the Northwestern Bank of Statesville, North Carolina for a line of credit in the sum of $100,000. The loan is to be amortized over 5 years by equal quarterly installments. The first payment, which is to be made 15 months after the money is taken down, will include interest accruing during the 15-month period. The interest is to be 1% over the prime rate prevailing when the loan is made. The loan will be made on the general credit of Statesville Broadcasting Company, Inc., and the bank will not require any collateral or security.

Issue No. 2: Areas and Populations

4. The areas and populations lying within the applicant's 1 mV/m contours are as follows:

	Population	Area (sq. mi.)
Congaree	282,228	672
Statesville	286,562	650

During daytime hours all of the areas and populations to be served by either applicant receive at least 5 existing aural services. However, the proposed nighttime contours cover certain areas and populations which presently receive fewer than 5 aural services. The comparison is as follows:

Number of existing nighttime services	Congaree		Statesville	
	Population	Area (sq. mi.)	Population	Area (sq. mi.)
2	6,147	20	0	0
3	6,150	16	13,994	126
4	98,777	552	80,994	416
5 or more	171,154	84	192,466	108

Issue No. 3: 307(b)

5. Congaree would serve the city of West Columbia, Lexington County, South Carolina. West Columbia has a population of 7,838 persons and an area of 2.37 sq. mi. The population increased by 22.3% between 1960 and 1970. The city is governed by a Mayor and eight

Councilmen. It employs 69 persons, including a recorder, city attorney, 10 full-time firemen and 21 policemen. It maintains a separate water and sewer department providing services to the city and adjacent areas. Public health services are available from a branch of the Lexington County Health Department located in West Columbia. The city is within the Brookland-Cayce School District. Three of nine elementary schools and one of two junior high schools attended by West Columbia children are located in the city with the others in nearby communities. Two high schools, both in adjoining communities, are attended by West Columbia students.

6. The city has some light industry, several shopping centers, and four banks maintain branch offices in West Columbia. There are approximately 20 churches within the city limits.

7. No aural broadcast services are licensed to West Columbia.

8. Statesville would serve the city of Columbia, the capital of South Carolina. Columbia has a population of 113,542 persons and an area of 111 sq. mi. The city's population increased by 16.5% between the years 1960 and 1970. It is located in Richland County directly across the Congaree River from West Columbia. The city of Columbia is a part of the Columbia Standard Metropolitan Statistical Area (population 322,880), as is the city of West Columbia.

9. Columbia has a council-manager form of government. The city employs 220 policemen, has 7 fire stations, and 4 volunteer fire departments. The city is an agricultural distribution center, and also contains substantial industrial activity. Educational, professional and cultural facilities compatible with its size and function are available.

10. Four full-time and one daytime standard broadcast stations are licensed to Columbia, as are three FM stations. Two daily and two weekly newspapers are published in the city.

Issue No. 4: Comparative

11. The principals of Congaree are: Barnett F. Goldberg, President, director and 27% stockholder; Clifford F. Kelley, Vice-President, director and 11% stockholder; Preston H. Callison, Secretary, director and 12% stockholder; Sanders R. Guignard, Treasurer, director and 27% stockholder; Roy V. Lind, director and 12% stockholder; and Harold L. Roach, director and 11% stockholder. Neither Congaree nor its principals have any present connections with any communications media.

12. Mr. Goldberg is a resident of Columbia, and since 1961 has been an acoustical and electronics consulting engineer. He proposes to devote a minimum of 22½ hours to the station as technical director. Mr. Callison is a resident of West Columbia and an attorney. He proposes to devote some 10 hours a week to the station handling editorials and reporting on legislative matters. Mr. Lind is a resident of Columbia and an attorney. He proposes to devote approximately 10 hours a week to the station directing publicity and public affairs programming. Mr. Kelley is a resident of Lexington, South Carolina, some 10 miles from West Columbia. He is engaged in the telephone answering and radio common carrier business. He would devote some 10 hours a week to the station as salesman. Mr. Roach is a resident of Columbia. He is engaged in the telephone answering and radio common carrier

business with Mr. Kelley. He proposes to devote full time to the station as commercial manager. Mr. Guignard resides in Columbia and is active in family business in the area. He would not give up his present activities, but would devote some 30 hours over a seven day week to the proposed station. His title would be General Manager. However, he would not occupy a staff position but would function as overseer of a conventional manager.

13. Statesville Broadcasting Company, Inc. has more than 50 stockholders, the largest of which is Statesville Theatre Corporation with approximately 25%. None of its principals would participate in the management of the proposed station on a full-time basis. However, the proposed station, as with Statesville's other stations, would be under the supervision of Mr. Garrett M. Alderfer, executive vice president of the company, and 3.14% stockholder. He visits each of Statesville's stations weekly for a full day. In addition, Statesville's central office in Statesville, North Carolina is in daily contact with all of the company's stations.

14. Statesville is presently the licensee of standard broadcast station WQXL, Columbia, South Carolina; Stations WSIC–AM and FM, Statesville, North Carolina; and WIST(AM), Charlotte, North Carolina.

CONCLUSIONS

Issue No. 1: Financial

15. Statesville's proposed bank loan requires neither collateral nor security. Plainly, the loan is available, and Statesville is financially qualified.

Issues No. 2 and 3: Areas and Populations and 307(b)

16. In determining a preference under a 307(b) issue the Commission looks to both the needs of the communities involved for a transmission service and the needs of the populations to be served for a reception service. Here, the majority of the populations which would receive the proposed service presently receive an adequate number of existing services. Neither applicant would bring service to a white or gray area. Congaree would bring a third service to some 6,100 people, while all of the population Statesville would serve already have at least three services available. On the other hand, Statesville would bring a fourth service to approximately 14,000 persons as compared to some 6,100 persons for Congaree. The needs of the slightly larger number of persons who would benefit from Statesville's fourth service are offset by the slightly greater need of those of whom would receive a third service from Congaree. There is no real basis for a preference on the reception aspect of the 307(b) issue.

17. However, in evaluating the needs of the communities involved for a transmission service, Congaree enjoys a clear and substantial preference. The Commission has traditionally placed great emphasis on the need of every true community for a first local transmission service. That is precisely what Congaree would bring to West Columbia. Of course, the Commission has always recognized the obvious fact that in larger communities the benefits of a local transmission

service are extended to a greater number of people, and Columbia is a much larger city than West Columbia. However, Columbia already has eight local services available. Its presumptive need for a ninth service does not approach West Columbia's presumptive need for a first. It is concluded that Congaree is entitled to a dispositive preference on the transmission aspect of the 307(b) issue.

Issue No. 4: Contingent Comparative

18. This issue is to be considered only "in the event it is concluded that a choice between applications should not be based solely on 307(b) considerations". Here, the 307(b) preference is very clear, and there is no reason why the decision should not be based entirely on that preference. No comparative conclusions will be formulated.

19. In sum, both applicants are fully qualified, but Congaree is entitled to a decisive preference on the 307(b) issue. The public interest would be served by a grant of the Congaree application.

Accordingly, IT IS ORDERED, That unless an appeal is taken to the Commission by a party, or the Commission reviews the Initial Decision on its own motion pursuant to Rule 1.276, the application of Congaree Broadcasters, Inc. IS GRANTED, and the application of Statesville Broadcasting Company, Inc. IS DENIED.

CHESTER F. NAUMOWICZ, JR.,
Administrative Law Judge,
Federal Communications Commission.

F.C.C. 73–930

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of ASCERTAINMENT OF COMMUNITY PROBLEMS BY EDUCATIONAL BROADCAST APPLICANTS; AMENDMENT OF SECTION IV (STATEMENT OF PROGRAM SERVICE) OF F.C.C. BROADCAST APPLICATION FORMS 340 AND 342 (NONCOMMERCIAL EDUCATIONAL BROADCAST APPLICATIONS); AND FORMULATION OF RULES AND POLICIES RELATING TO THE RENEWAL OF EDUCATIONAL BROADCAST LICENSES	Docket No. 19816 RM–1851, –1874

NOTICE OF INQUIRY AND NOTICE OF PROPOSED RULEMAKING

(Adopted September 6, 1973; Released September 11, 1973)

BY THE COMMISSION:

1. The Commission hereby gives notice of inquiry and proposed rule making concerning its requirements and policies with respect to the ascertainment of community problems, needs and interests by educational broadcast applicants and licensees and the renewal of educational broadcast licenses.

2. In petitions for rule making (RM–1851 and RM–1874) the National Association of Black Adult Educators, the National Black American Law Student Association, the National Association of Black Students and Hollis H. Larkins, Jr. (the "Black Associations")[1] jointly, and Sandra W. Bennett, Ph. D.,[2] individually, have requested revision of FCC Forms 340 and 342[3] to require all applicants for noncommercial educational broadcast licenses, including applicants for renewal of station authorizations, to ascertain community problems, needs and interests and to propose programming in response thereto.[4] A statement in support of each petition has been filed by the National Association of Educational Broadcasters (NAEB), which has also referred to its comments submitted in Docket No. 19153, the Commission's rule making inquiry into the renewal process in the

[1] The Black Associations consist of organizations whose memberships include black law students, student government and black student union groups and black adult educators and whose primary purpose is to secure educational opportunities for the disadvantaged. Hollis H. Larkins, Jr. is a graduate of the School of Education of California State College at San Diego and is active in community educational affairs in the Los Angeles area.

[2] Sandra W. Bennett, Ph. D., a former director of research and development for the Center for Continuing Medical Education at the Ohio State University College of Medicine, has filed a rule making petition (RM–1874) on her own behalf as a concerned citizen, educator, broadcaster and researcher in educational broadcasting.

[3] FCC Form 340 is the application form for authority to construct or make changes in a noncommercial educational AM, FM or TV broadcast station. FCC Form 342 is the application form for renewal of a noncommercial broadcast station license (AM, FM or TV).

[4] The Bennett petition only refers to educational *television* stations whereas the Black Associations' request applies to all applicants for educational station licenses.

commercial broadcast field. Also, the Corporation for Public Broadcasting (CPB) has filed a petition for rule making (RM–1974), which requests certain changes in the noncommercial educational FM rules dealing with channel allocations, station licensing and operation and technical requirements. In its petition, CPB states that noncommercial FM applicants should be required to show that their stations will be used to serve ascertained community needs. The CPB petition has relevance to the inquiry herein. However, we are not attempting to dispose of the petition and its various requests concerning the educational FM rules in the context of this proceeding.

3. The Black Associations contend that noncommercial educational broadcasting has witnessed a shift in emphasis from "instructional" programming directed toward the student to "public" programming, which attempts to present news, public affairs and cultural offerings to the community at large. As a result, petitioners assert that educational broadcasters should be charged with the duty of ascertaining the educational and cultural needs of their communities under the same guidelines imposed on commercial broadcasters by the Commission's "Primer on Ascertainment of Community Problems by Broadcast Applicants." See *Report and Order in Docket No. 18774*, 27 FCC 2d 650 (1971). Although petitioners concede that the Commission may have been correct in paying deference to the instructional programming expertise of educational broadcasters during the advent of the noncommercial service, they stress that the evident change in emphasis to public programming demonstrates the need to impose formal ascertainment requirements on educational broadcasters to insure programming responsive to the general educational and cultural interests of communities and to the special problems of minority groups. The Black Associations emphasize the need for diversified ideas if educational stations are to contribute to the educational process and to the development of cultural awareness. In this regard, petitioners note that some educational television stations have refused to carry certain programs even though the need for such programming was apparent from expressions of interest by the public. In addition, petitioners refer to an independent study of educational television viewing which apparently reveals that educational television is perceived not as a medium for community dialogue but rather as a communications vehicle for the better-educated segments of the population, which usually provide substantial financial support for the service.

4. The Black Associations maintain that even though the ascertainment process is no substitute for media access by the disadvantaged, it does provide broadcasters with the opportunity to program in response to community problems. They point out that several parties, in response to the *Notice of Inquiry in Docket No. 18774*, 20 FCC 2d 880 (1969), urged that educational applicants should not be exempted from the Primer's ascertainment requirements and that they would profit as much as commercial broadcast applicants from the information obtained through community surveys. As petitioners note, the Commission declined to apply the Primer guidelines to applicants for educational broadcast licenses because of the specialized programming presented by educational stations. See 27 FCC 2d at

651. In spite of this determination by the Commission, the Black Associations contend that an educational broadcast applicant must become familiarized with local concerns by surveying his community and by soliciting ideas for relevant programming. Therefore, petitioners request the Commission to amend its rules (Sections 73.503(a) and 73.621(a)) and application forms (FCC Forms 340 and 342) to require educational broadcast applicants to ascertain community problems, needs and interests and to propose programming in response thereto, consistent with existing Primer guidelines and with the following recommended requirements:

(*a*) the applicant will conduct his ascertainment survey by consulting with students, young people, women and ethnic, economic and political minorities;

(*b*) the applicant will demonstrate the criteria used to determine community leaders;

(*c*) the applicant will demonstrate that the leaders selected for consultation are recognized by the groups for which they are selected;

(*d*) the applicant will conduct his ascertainment survey on a continuing basis and will submit specific evidence semiannually to the Commission to demonstrate that community problems, needs and interests are being served; and

(*e*) the applicant will demonstrate what steps he has taken to assure continuing contact with his community.

5. Sandra W. Bennett also asks that formal ascertainment requirements be imposed on educational broadcasters. She stresses that there is no sound reason to differentiate an educational broadcaster's obligations in this regard from those attached to a commercial broadcaster. Referring to an NAEB survey, petitioner asserts that local minority programming is virtually non-existent in public broadcasting, and she contends that ascertainment procedures which require an accounting of minority needs and interests should be instituted for educational broadcast applicants. Petitioner suggests that the ascertainment process must be on-going and that educational licensees must be able to show evidence of more than a six-month thrust every three years. She also recommends that every educational broadcaster be required to form a citizens' advisory council, whose membership would reflect diverse segments of the community and whose purpose would be to assist the educational station in identifying community problems and in formulating programming in response thereto.

6. The NAEB, in its statements in support of the rule making petitions, urges the Commission to initiate an inquiry to explore ascertainment criteria for public broadcasters. According to the NAEB, educational broadcasters must be attuned to the needs, interests and problems of their communities, and reasonable survey and reporting procedures, devised with the unique operations and objectives of noncommercial stations in mind, will assure their responsiveness to the primary needs of their service areas in the form of a continuing dialogue between station and community. Referring to its comments submitted in Docket No. 19153, the NAEB submits that the nature of materials to be included in renewal applications by educational broadcasters should await the outcome of an ascertainment inquiry

when the Commission can make a more informed judgment on the content of renewal applications and the announcements to be aired by educational broadcasters.

7. No extended discussion of the basic responsibilities of educational broadcasters is required. Commission regulations provide that noncommercial educational stations are to be licensed upon a showing that the station will be used to advance educational programs (Section 73.503(a)) and to serve the educational needs of the community (Section 73.621(a)). Congress has also recognized the significant contribution which noncommercial broadcasting can make in serving national and local needs, particularly in the areas of instructional and public affairs programming. In providing funding for public broadcasting through the Corporation for Public Broadcasting, Congress specifically declared that one of its purposes was "to encourage noncommercial educational radio and television broadcast programming which will be responsive to the interests of people both in particular localities and throughout the United States . . ." (Section 396(a)(4) of the Communications Act of 1934, as amended). The House Report, in commenting on the initial financial assistance to CPB, stated (H. Rept. No. 572, 90th Cong., 1st Sess., p. 10):

> . . . the rewards which are reasonably to be expected from this seed program cannot be measured in money alone. Who can estimate the value to a democracy of a citizenry that is kept fully and fairly informed as to the important issues of our times and whose children have access to programs which make learning a pleasure?

Similarly, the Senate Report of the next year points out that ". . . public broadcasting can be . . . a vital public affairs medium—bringing in depth many aspects of community and political life; . . . a means of examining and solving the social and economic problems of American life today." (Sen. Rept. No. 91–167, 91st Cong., 1st Sess., p. 7). Moreover, the efforts of Congress[5] and the Commission[6] have been directed to insuring that those licensed to operate broadcast facilities do so in a manner that reflects an awareness and responsiveness to the problems, the needs and interests of the public. And the Supreme Court has described the broadcaster as a proxy or fiduciary for the public, who is required to make a good faith effort to choose a program service that is responsive to community needs. *See Red Lion Broadcasting Co., Inc.* v. *F.C.C.*, 395 U.S. 367 (1969).

8. In view of the foregoing, even though formal ascertainment requirements have not been imposed on noncommercial broadcasters, there appears to be no question concerning their obligations in this regard . . . they, like commercial broadcasters, have an affirmative duty to determine the needs and interests of their communities and to program in such a way as to meet those ascertained needs. See, for example, *Report and Statement of Policy re: Commission En Banc*

[5] See Sections 307 (b) and (d), 309 and 315(a) of the Communications Act of 1934, as amended.

[6] See *Report and Order in Docket No. 18774, supra; Notice of Inquiry in Docket No. 18774, supra; Ascertainment of Community Needs by Broadcast Applicants*, 33 FR 12113 (1968); and *Report and Statement of Policy re: Commission En Banc Programing Inquiry*, 20 RR 1901 (1960).

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Programming Inquiry, *supra*, which attempted to define the scope of a broadcaster's obligation in the following terms:

> The confines of the licensee's duty are set by the general standard "the public interest, convenience or necessity." The initial and principal execution of that standard, in terms of the area he is licensed to serve, is the obligation of the licensee. The principal ingredient of such obligation consists of a diligent, positive and continuing effort by the licensee to discover and fulfill the tastes, needs and desires of his service area. If he has accomplished this, he has met his public responsibility. (Footnote omitted). 20 RR at 1912.

And noncommercial broadcasters have increasingly recognized their duty to serve, to a significant extent, as outlets for local expression. When noncommercial frequencies were first allocated, applications by educational institutions seeking to meet their own institutional needs predominated. The present profile of noncommercial educational stations, however, is quite different, as petitioners have pointed out.[7] Although many stations still devote a portion of their broadcast day to instructional programming, the major part of that day, particularly evening hours and weekends, is occupied by programming which is aimed at a broad spectrum of community problems, needs and interests.[8] In this regard, it is recognized that many educational stations conduct regular assessments of community needs to develop responsive programming even though they are not bound by the formal requirements imposed on commercial broadcast applicants and licensees.

9. The noncommercial broadcast service, by definition, differs markedly from the commercial service. It is designed to serve the educational needs of the community, and it is intended to meet cultural and informational interests often given minimal attention by commercial broadcasters who normally program to reach a large mass audience. This is not to say that noncommercial broadcasting is somehow missing the mark if its programming attracts large audiences. But, quite obviously, noncommercial service can tolerate audiences that would spell immediate disaster in the commercial area. Its strength, in fact, may derive from its ability to be innovative and to serve significant minority tastes, needs and interests. Nevertheless, it is a mistake to regard the noncommercial service as something apart from, and outside of, the basic structure of the Communications Act and Commission policies. The Act and its legislative history and our own pronouncements make clear the obligations imposed on educational broadcasters and the authority of the Commission to examine whether educational broadcasters have sought to ascertain and to meet community needs

[7] In terms of expanded service, for example, authorizations for noncommercial educational UHF–VHF stations have increased from 56 in 1961 to 236 in 1973. In addition, the average hours broadcast by each station have increased to 70.9, and approximately one-half of all stations are operating seven days a week. It is also estimated that about 63% of all broadcast hours are programed in color. See *One Week of Public Broadcasting*, April 1972, a survey conducted by Dr. Nathaniel Katzman for the Corporation for Public Broadcasting.

[8] About one-third of educational television programming is instructional in nature. This figure does not include transmissions over Instructional Television Fixed Service (ITFS), which was established on 2500–2690 MHz in 1963 as a supplemental service for the transmission of instructional and cultural materials to schools and other selected receiving locations. As of August, 1973, 500 ITFS channels were in use and another 100 such channels had been requested. It should be pointed out that this Notice does not pertain to the ITFS.

and to contribute to the goal of an informed electorate through controversial issue programming.[9]

10. Therefore, the Commission agrees with the petitioners that noncommercial educational broadcasters should be attuned to the problems, needs and interests of their service areas and should present programming in response thereto. We do realize that many noncommercial stations currently assess community needs as a matter of policy in order to stimulate a continuing dialogue with the public and to serve as effective outlets for local expression. We also note that as noncommercial broadcasting has developed, the emphasis has shifted from instructional to public programming and that such a shift magnifies the need for educational broadcasters to be aware of, and responsive to, community needs. In the past, the Commission has not imposed formal ascertainment requirements on educational broadcasters because of the unique character of the noncommercial service. In our *Report and Order in Docket No. 18774, supra*, we stated that the Primer would not be applied to educational broadcast applicants even though several parties had contended that the ascertainment process would profit educational applicants as much as commercial applicants. Since the issuance of the Primer, we have been urged by several parties, including the petitioners, to impose formal ascertainment requirements on educational applicants, and we are now persuaded to reexamine our prior position in light of the apparent shift in programming emphasis with the growth of educational stations and of the increased awareness of the role to be served by educational broadcasting on the local, state and national levels.

11. We therefore invite comments from interested parties on the question of whether formal ascertainment requirements should be imposed on educational broadcast applicants, including applicants for renewal of station authorization, and, if so, what specific obligations should be assessed. We request comments on how educational radio and television stations, given their unique character and the special nature of their program service, can best ascertain community problems, needs and interests and whether there should be special procedures imposed in regard to the ascertainment of educational and instructional needs [10] as opposed to general community needs. We also ask parties to address themselves to the following questions: Whether a distinction should be drawn between educational radio and tele-

[9] Even though Section 399 of the Communications Act prevents educational stations from editorializing, the obligation that a licensee devote a reasonable amount of time to the discussion of controversial issues of public importance is applicable to noncommercial as well as commercial broadcast stations. The Senate Commerce Committee emphasized this obligation in its Report on S. 1090 (Authorization for Public Broadcasting, April 17, 1973) when it stated, "Public affairs programming, at the local and national levels, belongs in public broadcasting. Presented objectively these programs can enlighten their audiences, and bring increased understanding and added dimensions to the problems and issues which beset our society." Of course, the licensee's coverage of issues must be effected in full compliance with the "equal opportunities" and fairness requirements of Section 315 of the Act and Commission rules and policies.

[10] In addition to the obligation to serve local needs, particularly in the public affairs area, educational stations are encouraged to provide instructional services in an effort to fulfill the educational needs of the community. Congress, itself, has declared that it is in the public interest to use educational broadcast media for instructional purposes. See Section 396(a)(1) of the Communications Act of 1934, as amended. Therefore, comments are invited on whether educational applicants should also ascertain the *instructional* needs of the community (whether formal in-school or informal out-of-school) and, if so, what specific requirements should be imposed.

vision stations in terms of ascertainment requirements (see paragraph 12, *infra.*); whether a distinction should be drawn between classes of radio stations (for example, between a class D ten-watt FM station and a higher-powered educational radio station); whether the existence of a state-wide educational broadcast system should have any effect on ascertainment requirements imposed on member stations; and whether formal ascertainment procedures will impose substantial financial burdens on educational applicants and licensees. Since we have gained some experience with the Primer guidelines, which could be applied in most respects to educational broadcast applicants, we propose to offer the 1971 Primer as a reference point for this part of the inquiry. Therefore, we invite specific comments on whether the Primer guidelines can and should be applied to educational applicants, whether for new or modified facilities or for renewal of license. Parties commenting on this question who feel that the Primer should be applied to educational applicants, but with certain modification, should set forth their proposed modifications and reasons therefor. In this regard, we note that the Primer for commercial applicants, at Question and Answer (18), suggests that applicants should not elicit program preferences, but should focus on community problems. In the educational area, it may be appropriate to permit educational stations to sound out program preferences or suggestions since their service offering is so specialized in nature. In any event, we request commenting parties to address such questions. We also ask for discussion on the additional requirements proposed by the Black Associations (see paragraph 4, *supra*), especially the requirement for a continuing ascertainment process, and on Sandra Bennett's proposal that every educational broadcaster be required to form a citizens' advisory council (see paragraph 5, *supra*).

12. In addition, commenting parties should be aware of the Commission's pending *Notice of Inquiry in Docket No. 19715*, 40 FCC 2d 379 (1973), which is a proceeding to investigate the ascertainment process applicable to commercial broadcast applicants and which was initiated, in part, because of complaints that various ascertainment requirements are unnecessary, impractical or unduly burdensome. Part I of the inquiry is designed to explore the alleged differences between radio and television relative to the role of each in discharging its public interest responsibilities under the Act and the effect of certain variables, such as market size, number of stations in a market, number of employees, specialized formats, etc., on those roles and the ascertainment process. Part II deals specifically with the ascertainment process for both radio and television in light of the differences elicited in Part I and raises numerous questions concerning certain ascertainment requirements. Parties commenting in this proceeding should feel free to address themselves to any question raised in Docket No. 19715 which they consider to have impact on our inquiry into ascertainment by educational applicants. It is quite conceivable that revisions or modifications in the Primer guidelines for commercial applicants could have a significant effect on our consideration of formal ascertainment requirements for educational broadcast applicants, and, for that reason, we ask commenting parties to assess the relevance of matters raised in Docket No. 19715.

13. At present, applicants for authority to construct or make certain changes in a noncommercial educational AM, FM or TV station are required to file Form 340, Section IV of which consists of a statement of program service. Section IV requires information concerning the applicant's purpose and objective in establishing the proposed station, proposed program policies and program schedule, available facilities, staff and equipment, proposed network affiliation, etc. Section IV of Form 342 (educational station renewal application) requires the submission of program logs for a full week of operation and information concerning operating hours, sources of programming, types of programs (instructional, general educational, performing arts, public affairs, light entertainment and other), and whether the applicant contemplates any material changes in future program service and any network affiliation. Unlike similar sections in FCC Forms 301, 303, 314 and 315 (commercial broadcast application forms), there is no requirement in Forms 340 and 342 for the ascertainment of community problems, needs and interests by the educational applicant and for his program proposals in response thereto.

14. In the event that the Commission determines herein that formal ascertainment requirements should be imposed on educational broadcasters, then it is proposed to amend Section IV of Forms 340 and 342 to require educational applicants and licensees to indicate the methods used to ascertain the needs and interests of the public to be served by the station; the significant needs and interests of the public which the applicant will serve during the coming license period; and typical and illustrative programs or program series that applicant plans to broadcast to meet ascertained needs and interests. See Appendix. In addition, it is proposed that Section IV of Form 342 (renewal application) be amended to require information from educational licensees as to what programs or program series were presented during the year preceding the filing of the renewal application to meet the most significant needs and interests of the community. In this way, the Commission will be better able to evaluate an educational licensee's responsiveness to community needs and his performance in light of past proposals. Persons commenting on the proposed revisions in Forms 340 and 342 are also invited to suggest other modifications that would be consistent with the imposition of ascertainment requirements on educational applicants. The Commission believes that an effective public broadcasting system must be rooted in an awareness of, and responsiveness to, important community needs. Our proposals herein are not meant to place an undue or unnecessary burden upon the resources of educational applicants and licensees.[11] Our proposals are intended to enable educational broadcasters to de-

[11] The information which would be required under the proposed modification of FCC Forms 340 and 342 is in many instances already being developed by noncommercial educational applicants. Federal funds have been made available by Congress for assistance in the construction and expansion of educational stations under regulations promulgated by the Secretary of Health, Education and Welfare. HEW regulations require, *inter alia*, that an applicant ascertain the broadcast needs of the area to be served, including an evaluation of the general or special educational and cultural needs for the establishment or improvement of educational broadcasting services which the project is designed to fulfill. Applicants are also asked to indicate the manner in which needs were determined, to identify the sources of information, to include appropriate supporting evidence, if relevant, to submit population and enrollment data of the area to be served, and to document and justify the proposed program service. Thus, any applicant seeking federal funds would have available much, if not all, of the information we propose to require.

velop the information necessary to make informed programming judgments.[12]

15. In our *Notice of Inquiry and Notice of Proposed Rule Making in Docket No. 19153*, 27 FCC 2d 697 (1971), we indicated our intent to simplify the broadcast renewal process by concentrating on the essential elements of broadcast service to the public, by encouraging a continuing dialogue between a licensee and his community throughout the license period and by providing for more orderly procedures in the consideration of petitions to deny renewal applications and related pleadings. In paragraph 3 of the Notice, we indicated that Parts II and III of the inquiry concerning proposed revisions of our rules relating to the time for filing renewal applications, petitions to deny and related pleadings and to announcements of the filing of renewal applications would be applicable to broadcasting generally, including the noncommercial educational service. However, we also noted that Part I, which proposed requirements for the broadcast of notices to the public about the manner in which to comment on station performance and for the maintenance of a complaints and suggestions file, would exclude educational broadcasters; and that Part IV, which proposed revisions in Section IV–B (Statement of Television Program Service) of FCC Form 303 (renewal application) and the adoption of an annual reporting form, would apply only to commercial television stations.

16. On May 4, 1973, the Commission released an *Interim Report and Order in Docket No. 19153*,[13] FCC 73–451, 27 RR 2d 553, in which the proposals mentioned above were adopted with certain modifications. In regard to Parts II and III, which are applicable to *all* broadcast station licensees, Commission rules would be revised to change the filing dates for renewal applications (from 90 days prior to expiration of station license to four months) and for petitions to deny and related pleadings and to require the broadcasting of announcements both before and after the filing of a renewal application, which would apprise the public of the application's filing and of the appropriate time for submitting comments thereon. Pursuant to Part I, all *commerical* broadcast licensees would be required to broadcast announcements every 15 days during the license period, informing the public of licensee obligations and of the proper method for expressing opinions on station operation. All commercial broadcasters would also be required to retain in their public files written comments and sug-

[12] Parties are also invited to comment on the need for revisions in Commission regulations dealing with educational broadcast stations (Sections 73.503(a) and 73.621(a)) in the event ascertainment requirements are imposed herein. In this regard, we note that the Black Associations have suggested the addition of the following language at the end of the respective subparagraphs cited above:

> All applicants for educational broadcast licenses, including applicants for the renewal of temporary educational station broadcast licenses, will ascertain the educational and cultural interests, needs and problems of the community, and make proposals for programs based on such ascertainment.

The Commission is not now proposing specific rule modifications in this regard. However, we do note that our Docket No. 19715 inquiry asks whether ascertainment requirements should be incorporated in regulations or should be left, as now, in policy statements and application forms.

[13] In paragraph 214 of the *Interim Report*, we explained that the report will not be published in the Federal Register until the annual programing report (see *infra*) and revised Section IV–B of FCC Form 303 are cleared by the Office of Management and Budget. Therefore, the revised rules contained in the report will not become effective until 30 days after Federal Register publication, and the time for filing petitions for reconsideration will also run from the date of publication.

gestions received about station operation.[14] With respect to Part IV, which is applicable to commercial television stations only, we would require stations to prepare an annual listing of the significant problems and needs of their communities and of typical and illustrative programming aired during the year directed to those problems and needs. The listings are to be placed in the local public inspection file, and the three annual listings for the current license period are to be forwarded to the Commission upon the filing of the renewal application. Television licensees would also be required to compile composite week programming statistics in an annual programming report to be sent to the Commission each year and to be considered at renewal time. Moreover, certain revisions in Section IV–B of FCC Form 303 were made in an attempt to refine the information required of television licensees, which would be helpful in evaluating station performance.

17. Since we have issued our *Interim Report and Order in Docket No. 19153* and since the questions raised in this proceeding concerning ascertainment by educational broadcasters have relevance to Parts I and IV of Docket No. 19153, we hereby invite comments on whether the requirements adopted in Parts I and IV should be applied to educational licensees and, if so, what modifications are called for in light of the unique nature of the noncommercial service. It would appear that the requirements to be imposed on commercial broadcasters concerning the airing of announcements about public comment on station operation and the maintenance of a local complaints and suggestions file would not be unduly burdensome on educational licensees and would serve to implement a continuing dialogue between station and community. In fact, in the *Interim Report*, we specifically noted that the public comment announcements were intended to supplement existing ascertainment procedures and that the complaints and suggestions file was a valuable device to test the nature of a station's response to community feedback. In regard to Part IV proposals concerning commercial television licensees, we request comments on whether a similar approach should be taken with educational television broadcasters and, if so, what modifications are appropriate to accommodate the specialized nature of educational broadcasting. While we do recognize that the Part IV proposals of Docket No. 19153 contain a modified approach to ascertainment by commerical television licensees, we do not intend to propose similar requirements for educational television licensee on the basis of this general notice. Rather, we prefer to solicit the suggestions of interested parties and to consider those comments in light of the final disposition of Docket No. 19153. We shall then be in a better position to assess the desirability of a further notice delineating specific proposals for the renewal process in the educational broadcast area. In the meantime, we offer the modifications of Section IV of FCC Forms 340 and 342 contained in the Appendix, which conform with existing ascertainment requirements for commercial applicants with the exception of proposed Question 7 of Form 342.

[14] The retention requirement for radio stations will be on an experimental basis and will be evaluated for usefulness by our re-regulation task force in due course. See paragraph 51 of *Interim Report, supra.*

18. Authority for the institution of this proceeding and for the revisions of FCC Forms 340 and 342 is contained in Sections 4(i), 303, 307, 308 and 309 of the Communications Act of 1934, as amended.

19. In accordance with the procedures set forth in Section 1.415 of the Commission's rules, interested persons may file comments on or before December 14, 1973, and reply comments on or before January 14, 1974. It is hoped that comments, either formal or informal, will be submitted by interested parties from all segments of the public and the various public broadcasting entities, particularly the individual licensees. All relevant and timely comments and reply comments will be considered by the Commission before final action is taken in the proceeding. In reaching its decision in this proceeding, the Commission may also take into account other relevant information before it, in addition to the specific comments invited by these Notices.

20. In accordance with the provisions of Section 1.419 of the Commission's rules, an original and 14 copies of all statements, briefs, and comments filed shall be furnished to the Commission. However, in an effort to obtain the widest possible response in this proceeding from licensees and members of the public, informal comments (without extra copies) will be accepted. Copies of all pleadings filed in this matter will be available for public inspection during regular business hours in the Commission's Public Reference Room at its headquarters in Washington, D.C.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Acting Secretary.*

APPENDIX

FCC Form 340

Section IV—Statement of Program Service of Broadcast Applicant. Add the following questions:

6. State in Exhibit No. —— the methods used by the applicant to ascertaian the problems, needs and interests of the public served by the station. Such information shall include: (1) identification of representative groups, interests and organizations which were consulted and (2) the major communities or areas which applicant principally undertakes to serve.

7. Describe in Exhibit No. —— the significant problems, needs and interests of the public which the applicant believes his station will serve during the coming license period, including those with respect to national and international matters.

8. List in Exhibit No. —— typical and illustrative programs or program series that applicant plans to broadcast during the coming license period to meet those problems, needs and interests.

NOTE.—Sufficient records shall be kept on file by the applicant, open for inspection by the Commission, for a period of 3 years from the date of filing of this statement (unless requested to be kept longer by the Commission) to support the representations required in answer to Questions 6, 7 and 8. These records should *not* be submitted with this application and need not be available for public inspection.

FCC Form 342

Section IV—Statement of Program Service of Broadcast Applicant. Add the following questions:

4. State in Exhibit No. —— the methods used by the applicant to ascertain the problems, needs and interests of the public served by the station. Such information shall include: (1) identification of representative groups, interests and organizations which were consulted and (2) the major communities or areas which applicant principally undertakes to serve.

5. Describe in Exhibit No. —— the significant problems, needs and interests of the public which the applicant believes his station will serve during the coming license period, including those with respect to national and international matters.

6. List in Exhibit No. —— typical and illustrative programs or program series that applicant plans to broadcast during the coming license period to meet those problems, needs and interests.

NOTE.—Sufficient records shall be kept on file by the applicant, open for inspection by the Commission, for a period of 3 years from the date of filing of this statement (unless requested to be kept longer by the Commission) to support the representations required in answer to Questions 4, 5 and 6. These records should *not* be submitted with this application and need not be available for public inspection.

7. Describe in Exhibit No. —— the specific programs or program series that applicant broadcast during the 12 months preceding the filing of this application to meet significant problems, needs and interests of the public.

F.C.C. 73R-321

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of 5 KW, INC., WILMINGTON, OHIO	Docket No. 19218 File No. BPH-7074
CLINTON COUNTY BROADCASTING CORP., WILMINGTON, OHIO For Construction Permits	Docket No. 19219 File No. BPH-7122

APPEARANCES

Calvin Davison, on behalf of 5 KW, Inc.; *Mark E. Fields*, on behalf of Clinton County Broadcasting Corporation; and *William D. Silva*, on behalf of the Chief, Broadcast Bureau, Federal Communications Commission.

DECISION

(Adopted September 7, 1973; Released September 13, 1973)

BY THE REVIEW BOARD: BERKEMEYER, PINCOCK, AND KESSLER.

1. The mutually exclusive applications of 5 KW, Inc. and Clinton County Broadcasting Corporation for a new FM station in Wilmington, Ohio were designated for hearing by Commission Order, FCC 71-410, 36 FR 7995, published April 28, 1971. The issues specified for resolution included financial issues as to each applicant and a comparative issue. The hearing was conducted before Administrative Law Judge Forest L. McClenning who issued an Initial Decision, FCC 72D-63, released October 4, 1972, in which he concluded that both applicants are financially qualified. The Judge further concluded in his evaluation of the applicants under the standard comparative issue that Clinton County Broadcasting Corporation was entitled to substantial preference under both the diversification and best practicable service criteria; and therefore that the public interest would be best served by granting that application.

2. 5 KW, Inc. filed exceptions and requested oral argument. The Broadcast Bureau replied to those exceptions and oral argument was heard by the Review Board July 24, 1973. The Board has carefully considered the Initial Decision in light of the exceptions and reply, the oral argument and the record in this proceeding and is satisfied that the Presiding Judge's findings of fact are accurate, complete, and fairly reflect the record; and that those findings adequately support his conclusions with which the Review Board is in full agreement. Furthermore, the Judge has, in our view, adequately considered the matters of substance raised in the exceptions and no useful purpose would be served by further discussion here. Therefore, except as modified in the rulings on exceptions contained in the attached appendix,

Judge McClenning's Initial Decision is adopted by the Review Board. Finally, the Board also has before it a petition to dismiss, filed July 5, 1973 by Clinton County Broadcasting Corporation,[1] and petitions for leave to amend, filed by that applicant on July 26 and August 20, 1973.[2] In the petition to dismiss, it is alleged that, in view of the announced intention to transfer control of 5 KW, Inc., its application for a new FM stations should be dismissed. However, in view of our denial of the application of 5 KW, Inc., we do not believe it is necessary to determine the effect of the proposed transfer on its application in this proceeding, and the petition will therefore be dismissed. The petitions for leave to amend report information that has no significance on the outcome of this proceeding and will be granted.

3. Accordingly, IT IS ORDERED, That the petition to dismiss application and termination of proceeding, filed on July 5, 1973 by Clinton County Broadcasting Corporation IS DISMISSED, and that the petitions for leave to amend, filed on July 26 and August 20, 1973 by Clinton County Broadcasting Corporation ARE GRANTED and the amendments ARE ACCEPTED; and

4. IT IS FURTHER ORDERED, That the application (BPH–7074) of 5 KW, Inc. for a construction permit for a new FM station in Wilmington, Ohio IS DENIED, and that the application (BPH–7122) of Clinton County Broadcasting Corporation for a construction permit for a new FM broadcast station at Wilmington, Ohio IS GRANTED.

DEE W. PINCOCK,
Member, Review Board,
Federal Communications Commission.

APPENDIX

RULINGS ON EXCEPTIONS OF 5 KW, INC.

Exception No.	*Ruling*
1	Denied. The presiding judge's finding fairly reflects the record, and the additional finding requested is of no decisional significance.
2(a)*	Denied. A recitation of the Review Board's reasons for granting the petition to enlarge would serve no useful purpose, and is therefore of no decisional significance.
2(b)	Denied. Those outstanding obligations were included in Clinton's projected expenses and a recitation that some of those expenses had been incurred at the time of hearing would have no bearing on the decision in this case.
2(c)	Denied. The judge noted the possibility that the expenditures might be increased by the dividend payment on preferred stock but correctly noted that such payment was not mandatory.
3(a)	Granted. The capital investment of Clinton's principals is $6,250 held in escrow in the First National Bank of Wilmington.

*Since 5 KW has included several exceptions under a single number, we will for clarity use an alphabetical subdesignation to identify the exceptions.

[1] The Board also has before it comments of the Broadcast Bureau, filed July 16, 1973, and an opposition to the petition, filed July 18, 1973 by 5 KW, Inc.
[2] The Board also has before it the Broadcast Bureau comments filed August 6, 1973.

Exception No.	*Ruling*
3(b)	Denied. Herbert E. Shaper, Jr. is relying on a loan to meet his commitment. The findings of fact fairly reflect the record on this matter and no useful purpose would be served by further analysis of his personal financial situation.
3(c)	Denied. The Board agrees with the ruling of the administrative law judge that the existing limited financial issue did not contemplate an inquiry into the propriety of the proposed loan from Miller to Shaper. The petition to enlarge issues requested an issue "to determine the availability of the $30,000 loan to be made to Clinton County Broadcasting Corp. by Samuel and Rose Miller." The presiding judge had already noted that the availability of the loan was a proper subject of inquiry under the existing issues. Thus, the Board concluded that the petition must be regarded as an appeal from the judge's refusal to permit an inquiry as to the propriety of the loan under that issue. Since the pleading was late and filed without the judge's permission, it was properly dismissed. See sec. 1.301 of the Commission's rules. Moreover, the Board is satisfied that the judge's refusal to inquire into the propriety of the loan was fully consistent with the well established principle that the Commission will decline to litigate matters which are not primarily within its jurisdiction. See *WIOO, Inc.*, 73R-118, released March 22, 1973, 40 FCC 2d 217, 26 RR 2d 1611; *John Hutton Corporation*, 27 FCC 2d 214, 19 RR 2d 553.
3(d)	Denied. The requested finding is of no decisional significance.
4	Denied. The presiding judge properly refused to permit an inquiry into the adequacy of Clinton's staffing plans in the absence of a specific issue, *Policy Statement on Comparative Broadcast Hearings*, 1 FCC 2d 393, at 397, 5 RR 2d 1901 (1965). Moreover, the issue added by the Board does not encompass an inquiry into the basis of applicant's costs.
5	Denied. The proper test as enunciated in *Ultravision Broadcasting Company*, 11 FCC 2d 394 (1968) is not the legal enforceability of the contract but reasonable assurance that the commitments will be met. The record amply supports the Judge's findings and conclusions concerning the advertising commitments.
5(b)	Denied. The contracts statements of prospective advertisers, interrogatories and depositions considered together give reasonable assurance that the projected advertising revenue will be available to meet the first two years' operating expenses.
5(c), 6, 7 (a), (b), (c), (d).	Denied. The judge's findings and conclusions excepted to fairly and accurately reflect the record.
8 (a), (b), (c), (d), (e).	Denied. The judge's findings clearly warrant the conclusions reached by the Judge concerning Clinton's financial qualifications.
8(f)	Denied. Since the judge properly found both applicants to be financially qualified, the ultimate decision must be on the comparative issue.
9, 12 (a), (b)	Denied. The judge's conclusions in these matters are fully supported by the record, his findings and Commission precedent.
10	Denied as being of no decisional significance.
11	Denied. We find no showing of 5 KW's integration proposal in the record. The application is not a part of the record of this proceeding.

F.C.C. 72D-63

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of 5 KW, INC., WILMINGTON, OHIO	Docket No. 19218 File No. BPH-7074
CLINTON COUNTY BROADCASTING CORP., WILMINGTON, OHIO For Constructon Permits	Docket No. 19219 File No. BPH-7122

APPEARANCES

Lauren A. Colby and *Richard J. Tarrant* (Colby & Tarrant), and *Calvin Davison* (Reavis, Pogue, Neal & Rose) on behalf of 5 KW, Inc.; *Mark E. Fields* (Samuel Miller) on behalf of Clinton County Broadcasting Corporation; and *William D. Silva* on behalf of Chief, Broadcast Bureau, Federal Communications Commission.

INITIAL DECISION OF ADMINISTRATIVE LAW JUDGE
FOREST L. MCCLENNING

(Issued September 26, 1972; Released October 4, 1972)

PRELIMINARY STATEMENT

1. By order released April 21, 1971, pursuant to the provisions of Section 309(e) of the Communications Act of 1934, as amended, the above-captioned applications were designated for hearing in a consolidated proceeding. Each seeks a construction permit for a new FM broadcast station to operate at Wilmington, Ohio on Channel 272 (102.3 MHz) with 3 kilowatts power (horizontal and vertical) and antenna height of 300 feet above average terrain. The order of designation found each applicant qualified to construct and operate its proposed station except as indicated by the issues specified, but that the applications are mutually exclusive. Data submitted by the applicants indicated that there would be a significant difference in the size of the areas and populations which would receive service and, consequently, coverage was specified as a factor to be considered under the comparative issue. Hearing was ordered on the following issues:

1. To determine whether 5 KW, Inc. has available the additional $36,262 required for construction and first-year operation of its proposed station without reliance on revenues, to thus demonstrate its financial qualifications.

2. To determine whether Clinton County Broadcasting has available the additional $39,425 required for construction and first-year operation of its proposed station without reliance on revenues, to thus demonstrate its financial qualifications.

3. To determine which of the proposals would on a comparative basis better serve the public interest.

4. To determine in the light of the evidence adduced pursuant to the foregoing issue, which, if either, of the applications for construction permit should be granted.

2. A prehearing conference was held June 11, 1971. Hearing was held September 27, 1971 and the record closed by order released December 1, 1971. By this same order the petition of Clinton County Broadcasting Corporation for leave to amend was granted, the amendment tendered therewith accepted and the financial proposal, as amended, incorporated by reference into the record. Proposed findings of fact and conclusions of law were filed by the Broadcast Bureau on November 8, 1971 and by the applicants on December 10, 1971.[1]

3. By order released March 7, 1972 (FCC 72R–54, 33 FCC 2d 895) a further petition to enlarge issues filed on October 26, 1971 by 5 KW, Inc. was granted and the issues enlarged to include the following:

To determine whether sufficient funds will be available to sustain the proposed station of Clinton County Broadcasting Corporation during the second year of operation.

4. Further hearing conferences were held on April 3 and July 7, 1972. Written interrogatories were circulated and depositions were taken on June 6, 1972. Further hearing was held and the record closed July 27, 1972. Supplementary proposed findings of fact and conclusions of law were filed by all parties September 1, 1972.

FINDINGS OF FACT

The Community

5. Wilmington, Ohio (population 10,051)[2] is the county seat and largest city in Clinton County (population 31,464). The community is located 30 miles southeast of the center of Dayton, Ohio and is not part of any urbanized area. Standard broadcast Station WMWM (see paragraph 28, *infra*) is the only broadcast facility authorized to operate at Wilmington.

Coverage

6. The proposed transmitter sites are located approximately six miles south-southeast of Wilmington within 1.8 miles of each other. The predicted 1.0 mv/m contours of the stations proposed by 5 KW, Inc. (hereinafter 5 KW) and Clinton County Broadcasting Corporation (hereinafter Clinton) are approximately circular in shape and extend 12.3 to 15.8 miles and 13.6 to 15.2 miles from the respective transmitter sites. Each would provide a 1.0 mv/m signal to an area of 654 square miles. The difference in transmitter sites results in a similar difference in service areas. The area within the 1.0 mv/m contour of 5 KW, but not of Clinton, covers a crescent shaped area 2 miles in width at the widest point which extends clockwise from south to north along the western periphery of 5 KW's service area. Clinton's proposed service area reaches beyond that of 5 KW, forming another

[1] Clinton County Broadcasting Corporation filed proposed findings of fact and conclusions of law initially on October 19, 1971. Following acceptance of an amendment by order released December 1, 1971 (FCC 71M–1865) revised proposed findings of fact and conclusions were filed by this applicant on December 10, 1971.

[2] All population figures herein are based on 1970 U.S. Census data.

crescent shaped area about 3 miles in width at the widest point which extends clockwise from north to south along the eastern periphery of Clinton's service area. Areas and populations would be as follows:

	Population	Area (sq. mi.)
Within common 1 mv/m contour	39,866	588.4
Within 5 KW 1 mv/m contour only	3,976	65.6
Within Clinton 1 mv/m contour only	3,920	65.6
Total within 5 KW 1 mv/m contour	43,842	654
Total within Clinton 1 mv/m contour	43,786	654

7. No FM station provides service (1.0 mv/m or greater) to all of the area served by each applicant which is not served by the other. Thirteen stations serve portions of the area served by 5 KW only and six serve portions of the area served by Clinton only. Portions of each of these areas receive a minimum of 1 FM service, and up to a maximum of 10 FM services for 5 KW and 7 for Clinton. Areas and populations which would receive a second, third or fourth 1 mv/m service from the respective proposals would be as follows:

FM services	5 KW		Clinton	
	Population	Area (sq. mi.)	Population	Area (sq. mi.)
Second	5	0.2	3,234	37.1
Third	16	.3	598	25
Fourth	75	1.4	66	2.7

8. All rural portions of both differential service areas receive daytime AM service (0.5 mv/m or greater) from Stations WLW, WCKY, WHAS, WTVN, and WMWM, and parts thereof from WSRW and WJR. Service from these stations together with FM service from WSRW–FM and WCHO–FM make available more than 5 aural services daytime in each rural differential area. This occurs in areas where only 1 FM service is available. At night, AM service is provided by Stations WLW, WCKY and WHAS to all rural portions of both differential areas which when combined with FM service from WSRW–FM or WCHO–FM makes available a minimum of 4 aural services in each rural differential area. This likewise occurs in areas where there is a minimum of 1 FM service. The maximum number of aural services available at night in the rural differential areas is 10 as to Clinton and 13 as to 5 KW.

9. Approximately 20% of Hillsboro, Ohio (population 5,584) totalling 1,117 persons in 0.7 square mile lies in Clinton's differential service area and receives FM service from 1 station (WSRW–FM). AM service (2.0 mv/m or greater) is available to these persons from 4 stations daytime and from 1 (WLW) at night. Thus, they would receive a second FM service day and night, a sixth daytime aural service, and a third nighttime aural service from Clinton.

Financial

10. In designating a financial issue against 5 KW, the order of designation notes that 5 KW would require $53,362 to construct and operate

its proposed station for one year without reliance on revenues. It is also noted that of the $30,000 cash on hand claimed, only $17,100 was reflected in the balance sheet and the $50,000 bank loan relied on requires certain guarantees. 5 KW, therefore, was credited with having available $17,100 and is required to show the availability of $36,262.

11. 5 KW has submitted a loan commitment with a present expiration date of October 20, 1973 from the Citizens National Bank of Marietta, Ohio dated August 7, 1971, wherein the bank would loan 5 KW up to $50,000 at the prevailing interest rate repayable in monthly installments over a five-year period. The loan is conditioned on the corporate guarantee of The Times Company. Mr. William E. McKinney, president of The Times Company, has agreed to execute a corporate guarantee to the Citizens National Bank in the event the loan is made. The balance sheet of 5 KW dated July 31, 1971 shows a total of $25,005.79 cash on hand. Current assets exceed current liabilities by $4,507.51. Cash on hand plus the loan totals $75,005.79 to meet the $53,362 estimated requirement.

12. In designating a financial issue against Clinton the order of designation notes that $52,075 is required to construct and operate the proposed station for its first year without reliance on revenues. Clinton was credited with having $12,650 available. The $12,650 is still available to Clinton, consisting of a loan commitment from the Winters National Bank and Trust Company in the amount of $5,400, a personal loan of $1,000 and $6,250 held in escrow in an interest bearing savings account.

13. By the order released March 7, 1972 (paragraph 3, *supra*) it was found that Clinton will have construction costs and first year operating expenses of $57,135 under its amended proposal and second year expenses of $63,737.53 [3] for a total of $120,872.53. It was found to have available funds of $66,150 consisting of an escrow account of $6,250, loans totaling $59,900, and substantiated revenues of $1,664. It was further found that after meeting construction costs and first year operating expenses Clinton will have only $15,015 plus unsubstantiated revenues estimated at $40,000–$80,000 to cover its estimated second year expenses. It was held that, here the substantial deferrals of principal payments diminish the value of the first year survival presumption on which the Ultravision [*Ultravision Broadcasting Co.*, 1 FCC 2d 544, 5 RR 2d 343] standard rests. Accordingly, Clinton is required to show it can sustain itself during the second year of operation. The record shows first year costs remain the same as those noted in the original order of designation plus $500 travel expense and $4,792 interest costs if all loans are utilized. Second year expenses are as noted in the order released March 7, 1972, i.e., $63,737.53 assuming all loans are utilized at commencement of the two year period for a two year total of $121,104.53.[4] (See, however, footnote 5, *infra*.)

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[3] This figure included principal and interest due the First National Bank of Wilmington $8816.53 and $1595.00, respectively; interest due Mr. Shaper $2400.00; principal and interest due Winters National Bank and Trust Company $5400 and $108.00, respectively; principal and interest due Mr. McClary $1020.00; equipment payments $7512.00; and operating costs of $36,886.00.

[4] 5 KW included as an accumulated expense three years dividends on the 81 shares of issued preferred stock which correctly would be $1275.75. There is no requirement that these be paid though if not paid, the preferred stock contingent voting rights would become operative.

14. To meet its cash requirements Clinton relies upon the following:

(a) Loan of $30,000 from Herbert E. Shaper, Jr., under the terms of which Clinton would be required to pay interest every ninety days, based upon the prevailing local commercial bank rate on the day the loan would be made. No principal payments would be required until 39 months after the date of the loan. Assuming interest at the rate of 8% per annum, interest payments for the first two years would be $4,800. For funds to make this loan Mr. Shaper relies upon a loan commitment to Mr. and Mrs. Shaper of $30,000 from Samuel and Rose Miller. As security for the loan Mr. and Mrs. Shaper would place their stock in Clinton in escrow, pledge Mr. Shaper's interest in the estate of S. V. Fanning and place a mortgage against their real property. They had as of April 23, 1972 total assets of $47,952.65 and total liabilities of $22,272.39. Under the terms of this loan, Mr. and Mrs. Shaper would be required to pay interest at the prevailing commercial bank rate every 90 days. No principal would be due until 39 months after the loan is made at which time it becomes repayable in 39 equal monthly installments. The financial statement of Mr. and Mrs. Miller shows liquid assets in excess of both current and total liabilities in an amount adequate to meet this loan commitment.

(b) A loan commitment of up to $5,000 to Clinton from the First National Bank of Wilmington with interest at the prevailing rate at the time the loan is made, payable every 90 days. Principal payments would be due in 24 equal monthly installments with the first payment due 16 months after the loan is made. The bank commitment requires Mr. Harry S. Miars, a principal of Clinton to guarantee the loan. Mr. Miars has agreed to do so. Interest has been computed at the current rate of 8% per annum.

(c) A loan commitment of up to $5,000 to Clinton from the First National Bank of Wilmington with interest at the prevailing rate at the time the loan is made, payable every 90 days. Principal payments would be due in 24 equal monthly installments, with the first payment due 16 months after the loan is made. The bank commitment requires Mr. David Chaney, a principal of Clinton, to guarantee the loan. Mr. Chaney has agreed to do so. Interest has been computed at the current rate of 8% per annum.

(d) A loan commitment of up to $5,000 to Clinton from the First National Bank of Wilmington with interest at the prevailing rate at the time the loan is made, payable every 90 days. Principal would be due in 24 equal monthly installments, with the first payment due 16 months after the loan is made. The bank commitment requires Mr. John W. McClary, a principal of Clinton, to guarantee the loan. Mr. McClary has agreed to do so. Interest has been computed at the current rate of 8% per annum.

(e) A loan commitment of $2,500 to Clinton from the First National Bank of Wilmington, with interest at the prevailing rate at the time the loan is made, payable every 90 days. Principal payments would be due in 24 equal monthly installments, with the first payment due 16 months after the loan is made. The bank commitment requires Mr. Richard H. McKinley, a principal of Clinton, to guarantee the loan. Mr. McKinley has agreed to do so. Interest has been computed at the current rate of 8% per annum.

(f) A loan commitment of up to $6,000 to Clinton from the First National Bank of Wilmington, with interest at the prevailing rate at the time the loan is made, payable every 90 days. Principal payments would be due in 24 equal monthly installments, with the first payment due 16 months after the loan is made. The bank commitment requires Mr. Robert Tucker to guarantee the loan. Mr. Tucker has agreed to do so though he has no ownership interest in Clinton. Interest has been computed at the current rate of 8% per annum.

15. Clinton would have available to it after deduction of all first year interest payments required under the loan agreements, the sum of $66,150 to meet the $57,367 required to construct and operate the proposed station for a period of one year without reliance on revenues.[5] Clinton also relies on advertising revenues as well as the above-mentioned loans in order to finance its proposed operation for the required two year period.

16. Sworn "Advertiser Statements" were submitted by 71 local advertisers[6] to substantiate its reliance on revenues. These statements provide the 1971 advertising budget, the percentage this budget represented of sales and the total advertising budget for 1972 of each prospective advertiser. Each statement was accompanied by a certified copy of a contract for advertising specifying, *inter alia*, the type of ad and total amount to be expended over a two year period upon commencement of operation of the proposed station. One of the terms of the contract provides that either party may terminate by giving the other party 28 days' notice. The following summarizes these statements and contracts:

Advertiser	1971 budget in excess of	Percent of sales less than	1972 budget in excess of	Amount committed 2 years from start
Clinton Auto Parts	$750	1	$750	$400
H. H. Haworth Store	2,000	3	2,500	624
Taylor's Market	New		1,200	1,040
General Telephone	192,200	1	219,800	1,200
Champion Bridge	2,200	3	5,000	260
Gravely Sales	1,500	5	1,500	520
Scottles	New		600	624
Foster's, Inc	10,000	2	12,000	2,080
Foster's, Inc	10,000	2	12,000	780
Wilmington Paint & Body	1,000	3	1,000	624
P. E. Snyder & Sons	11,500	2	12,000	520
Hollon Sales & Service	3,000	3	3,000	1,040
Hugh Heeland's Mens	500		500	208
Hiatt Jewelers	1,200	2	1,200	500
Medarys Super Value	20,000	.02	20,000	1,040
Soybeans, Inc	4,916	5	5,000	2,080
Clinton City. Nat. Bank	20,000		22,000	1,248
Collect Hardware	New		1,200	1,040
Fisher Lumber	5,600	1½	6,000	1,300
Clinton Landmark	12,000	3	12,000	4,264
Red Dot Trophies	1,000	1	1,000	390
Buckley Bros., Inc	5,000	½	5,000	1,560

[5] Clinton plans not to draw down the loans totaling $23,500 from the First National Bank of Wilmington until at least eight months after commencement of operations and, accordingly, no principal payments on these loans are contemplated during the first two year period of operation. If effective, Clinton would have available approximately $8000 more for the first two years of operations than the figures here shown. It has not here been credited as it would be through deferment of principal payments, the factor leading to the requirement of a two year showing.

[6] Due to the time factor a "considerable" number of advertisers having "out-of-town" offices were not contacted though a number of them are now advertising on WMWM, the local Wilmington station.

Advertiser	1971 budget in excess of	Percent of sales less than	1972 budget in excess of	Amount committed 2 years from start
Ted Vandervort Ins	1,000		1,200	400
David Adair Co	519		519	400
Babb Sheet Metal	900	1	900	780
S. & R Shoes	1,000		1,500	1,300
Central Implement	2,500	1	3,000	1,300
Cox Printing	800	10	800	780
Swindler Florist	2,000	2	2,000	1,040
South Mens Shop	1,700	1½	1,500	1,040
Smith-Feihe Ins	2,500	10	2,500	500
Landrum Oil	2,000	1	2,000	1,040
Murphy Benham Hdw	7,400	2.7	7,000	1,040
Elmers Bait	350		500	468
Blanchester Oil	2,000	1	2,000	1,040
McKinley Ins	500	2	500	520
Ledford Equip	2,500		2,200–2,500	2,000
Gumley Imp. Co	6,000		6,000	1,040
Dairy Queen	6,000	15	6,000	1,040
E. S. Collett Lumber	3,900	2	3,500	1,300
1st Nat. Bk. of Wilmington				2,496
Tolle Auto	500	1	1,000	100
Johnson's Clothing	300	1	600	780
Van's Dari Crest	1,800	2	1,900	520
Coffee Break	550	5	1,400	1,040
Mandrell's Sweeper	New		700	520
Manhattan Lounge	2,000	1	2,000	904
Dave Chaney Tire	7,000	1½	7,000	1,000
D & E Equip	3,000	½	3,500	5,000
Clinton Cty. Cable	New		1,500	1,000
Haters Lock & Key	358	12	600	520
Camera Shop	750	2	750	364
Ka-Te Casual Wear	800	.03	1,500	1,000
Miller & Turner	800	1	750	200
Bill Marine Ford	6,000	18	6,000	2,080
G. C. Murphy Co	8,000	½	10,000	1,000
Naylors Furn	6,000	1	7,000	1,170
Bush's TV	2,000	4	2,000	1,300
Clouser's Roofing	3,000	2	3,000	1,092
Drake Trailer	5,800	1	6,500	1,300
Farquhar Co	2,400	2	2,400	1,040
Wilmington Savings	4,000	99	8,000	1,040
Sordley's Welding	1,200	1	1,200	104
Snider Shoe Store	500	1½	600	260
Martinsville Lumber	1,500	1	2,500	1,040
Evelyn's Family Str	New		500	416
Streber's Market	1,500	1	3,000	520
Walker's Saddlery	1,000	3	500	260
Foster Motor Co	8,500	1	8,000	1,040
Hull's Market	300	2	450	300
Mongold Oil Co	1,900	1	1,500	1,038
Total				70,814

17. Clinton relies on these advertising contracts only to sustain itself over its initial two years of operation. It, however, has not contacted all the potential advertisers in the area and estimates that there remains half as many advertisers not contacted as have already been reached. The money committed by each advertiser over the two year period is in most cases to be apportioned equally between the first and second year.

18. Written interrogatories were circulated by 5 KW to Clinton County's potential advertisers by which the following questions were posed:

a. What percentage of your advertising budget for 1972 will your commitment to Clinton County Broadcasting Corporation constitute (assuming that commitment were in effect in 1972)?

b. In 1971 how much did you spend on radio advertising?

c. What percentage of your advertising budget for 1972 is subject to contracts with newspapers, TV stations, radio stations, or other advertising media (ex-

cluding the proposed contract with Clinton County Broadcasting Corporation)?

d. Will implementation of your contract with Clinton County Broadcasting Corporation cause you to cancel any of these existing contracts? If so, which ones?

e. What factors would lead you to exercise your right to terminate your contract with Clinton County Broadcasting Corporation as set forth in Section 2(a) of the contract?

f. Will your continuation of your contract with Clinton County Corporation beyond the minimum perior set forth in Section 2(a) of the contract depend on the results achieved by your advertisements on its proposed FM station?

g. When Clinton County Broadcasting Corporation solicited you to sign an advertising contract, were you advised that it could be cancelled on a maximum of 28 days notice?

h. What geographical area do you desire to cover with your radio advertisements?

i. Were your answers to these interrogatories solicited by anyone? If so, who?

j. Since the date you signed your advertising contract with Clinton County Broadcasting Corporation, have there been any changes in your advertising budget or other advertising commitments which would lead you to cancel your contract with Clinton County Broadcasting Corporation?

19. A total of 59 of the potential advertisers answered some or all of the interrogatories. In response to question (a) the following is shown: less than 10%—17, 10 to 20%—10, 20 to 30%—16, 30 to 40%—7, 40 to 50%—2, 50%—5, 100%—1, no response—1.

20. In response to question (b) the following is shown: none 12, less than $100—1, $100 to $200—2, $200 to $300—6, $300 to $400—5, $400 to $500—2, $500 to $600—2, $600 to $700—2, $800 to $900—2, less than $1000—2, $1000 to $5000—13, $5000 and over—1, new business 5, do not know—3, not responsive—1.

21. In response to question (c) the following is shown: less than 10%—9, 10 to 20%—2, 20 to 30%—6, 30 to 40%—1, 40 to 50%—5, 50 to 60%—9, 60 to 70%—4, 70 to 80%—6, 80 to 90%—4, 90 to 100%—8, no budget—2, do not know—1, not responsive—2.

22. In response to question (d) 55 responded in the negative. The remaining four were: probably—1, undecided—1, yes—1 and no existing contracts—1.

23. Question (e) elicited a variety of responsive answers from 54 of the respondents. Of these 24 stated the contract would be terminated only if no public response resulted. Seven stated no factor would lead to termination. Nine would terminate only in the event of either the station or advertiser ceasing business. Thirteen would terminate only in the event of poor service on the part of the station. The remaining three were act of God, reduction in ad budget and failure of the station to give the coverage expected.

24. In response to question (f) 42 responded that continuation of the contract would depend on the results achieved by the advertisements broadcast, seven stated continuation would not depend on results with the remaining nine being three-not necessarily, five-probably, and one a qualified yes. In response to question (g) 52 responded yes, one responded no, and six did not remember whether they had been so advised. In response to question (g) 26 stated Clinton County only, with 19 specifying Clinton and other counties. Of the remaining 14, all except one specified the area desired to be covered in more general terms, i.e., 10 mile radius, 30 mile radius, 35 mile radius, 50 mile radius, southwest and south central Ohio, and local area. One specified the new

Vienna area. In response to question (i) 46 responded no, seven responded the answers had been solicited by counsel for 5 KW, Inc., one did not respond, one responded yes without giving a solicitor, three gave principals of Clinton and one the name of an official apparently associated with his company. To question (j) 55 responded no, three did not respond and one stated possibly because of a magazine contract.

25. The following eleven individuals, as representatives of their respective firms, were deposed on June 6, 1972: George Clouser-Clouser's Roofing and Building; Clinton D. Sanford-Soybeans, Inc.; Milton Farquhar-Farquhar Co.; Walter Ewing D & E Equipment Co.; John Reedy-Taylor's Market; Rex Irvin-Blanchester Oil Co.; Charles R. Ledford-Ledford Equipment Co.; Mack C. Dixon-Central Implement Co.; James L. Hasler-Clinton Landmark, Inc.; Jeffrey Thomas-G. C. Murphy; and Michael Turigliatto-Martinsville Lumber and Supply. On cross-examination the deponents were asked essentially the same questions as posed in the interrogatories. The following breakdown represents the percentage of the total 1972 advertising budgets which would be devoted to Clinton as reflected in the respective contracts: 0 to 10%–2; 10 to 20%–2; 20 to 30%–1; 30 to 40%–1; 40 to 50%–1; 50 to 60%–2; 70 to 80%–1; and one deponent did not know the percentage. The deponents asked, with the exception of one, stated that other advertising would not be cancelled as a result of the commitment to Clinton County. All the deponents stated that they had been advised of the 28 day termination clause with the exception of one who did not recall. All those deponents asked recalled seeing the rate card with one exception. None of the deponents knew of any changes which had occurred subsequent to signing the contract with Clinton which would effect its continuation. A majority of those asked stated that continuation of the contract with Clinton would depend on the results of the advertising.

The Applicants

26. 5 KW, Inc., a subsidiary of The Times Company, is authorized to issue 500 shares of common stock, one vote per share, $100 par value. Of the authorized stock 235 shares have been issued and are outstanding. The officers, directors, and stockholders, all residents of Marietta, Ohio, are as follows:

Name	Office	Stock interest	
		Shares	Percent
Daniel W. Burton	President and director	34	14.89
William E. McKinney	Treasurer, assistant secretary and director	5	2.13
Ruth M. Haupt		34	14.89
Betty C. McKinney [7]		29	13.34
Carl Clovis II		11	4.68
The Times Co.[7]		122	50.07

[7] William E. McKinney votes the stock owned by The Times Company and usually votes the stock of Betty C. McKinney, his wife. He is the brother of Ruth M. Haupt and brother-in-law of Daniel W. Burton.

27. The Times Company is authorized to issue 1000 shares of common stock, one vote per share, $100 par value. Of the authorized stock 840 shares have been issued and 608 shares are outstanding. Its of-

ficers, directors and stockholders, all residents of Marietta, Ohio, are as follows:

Name	Office	Stock interest	
		Shares	Percent
William E. McKinney	President, treasurer, and director	224	36.84
Daniel W. Burton	Vice President, secretary, and director		
Ruth M. Haupt	Assistant secretary and director	161	26.48
Jane M. Burton (wife of Daniel W. Burton).	Assistant Treasurer	223	36.67

28. 5 KW, Inc. is the licensee of standard broadcast Station WMWM, the only radio station in the city of Wilmington or in Clinton County, Ohio. Station WMWM is authorized to operate on the facilities 1090 kHz, 1 kw power (DA), daytime only with presunrise authority to operate with 5.4 watts power. There is a daily newspaper published in Wilmington which is not connected with 5 KW or The Times Company. 5 KW is also the licensee of standard broadcast Station WBRJ (910 kHz, 5 kw power, daytime only) at Marietta, Ohio. The Times Company also owns and operates the Times, a daily newspaper published in Marietta, Ohio which is approximately 130 miles from Wilmington. 5 KW stated on the record it is not relying on an integration showing in the proceeding and made no evidentiary showing under this comparative factor. As previously noted, all principals of 5 KW are residents of Marietta, Ohio.

29. Clinton, an Ohio corporation, is authorized to issue 1000 shares of common stock, one vote per share, no par value and 500 shares of preferred stock, par value $75. Preferred stock is non-voting except if two consecutive annual dividends of $5.25 per share are unpaid the voting stock shall then have one vote per share so long as the defaulted dividends remain unpaid. Of the authorized stock 500 shares of common and 81 shares of preferred have been issued and are outstanding and 35 shares of preferred have been subscribed. The officers, directors and stockholders are as follows:

Name and residence	Office	Stock Interest			
		Shares		Percent	
		Common	Preferred	Common	Preferred
Herbert E. Shaper, Jr., Wilmington, Ohio.	President and Director	250		50	
Gary L. West, Cincinnati, Ohio	Vice-President and Director.	200		40	
Ann M. Shaper, Wilmington, Ohio	Sec.-Treasurer and Director.	50		10	
Eugene Varney, Wilmington, Ohio	Director				
Edward G. Hater, Wilmington, Ohio	Director				
H. Barth Littleton, Sabina, Ohio			26		22.40
John W. McClary, Sabina, Ohio			14		12.07
Harry S. Miars, Wilmington, Ohio			10		8.62
Dave Chaney, Wilmington, Ohio			10		8.62
Richard W. Babb, Wilmington, Ohio			7		6.03
Charles Campbell, Wilmington, Ohio			5		4.31
Maynard Floyd, Wilmington, Ohio			5		4.31
Sheldon Waits, Sr., Wilmington, Ohio			4		3.45
Billy D. Marine, Wilmington, Ohio			35		30.17

30. *Herbert E. Shaper, Jr.* was born June 23, 1933 in Dayton, Ohio. His broadcast experience extends from 1952 at which time he served as chief maintenance engineer for the AM and FM stations of Miami University of Oxford, Ohio. At this time Mr. Shaper was majoring in radio and television production and direction. During summer vacation he was employed as a control technician for Station WHIO Dayton, Ohio. He entered the United States Army in December of 1953 and served in communications capacities during part of his two years' service. During this time he was also employed as an announcer-operator at Station KLEN Killeen, Texas. Since his discharge from the service his broadcast experience has included employment as a salesman for Station WAVI Dayton, Ohio; chief engineer and news director for Station WDRK–FM Greenville, Ohio; chief engineer-announcer for Stations WSRW AM & FM Hillsboro, Ohio initially and thereafter in charge of programming and sales for WSRW–FM; chief engineer, announcer and farm director at Station WMWM Wilmington, Ohio; master control technician at Station WKEF–TV Dayton, Ohio and WHIO (AM–FM–TV) Dayton, Ohio. In August of 1969 he moved to Wilmington in preparation for filing and prosecution of the instant application. He has continued his employment with WHIO as television control technician and Clinton County news correspondent. In Wilmington he is a member of the Fraternal Order of Eagles and has received a public service award from the Veterans of Foreign Wars, Wilmington Post. While with Station WMWM Wilmington, Ohio from October of 1964 to October of 1966 he served as a Boy Scout Executive Board member and as a member of the Kiwanis Club being its Key Club youth advisor. He holds a first-class radio-telephone operator license. He would be general manager of the proposed station.

31. *Gary L. West* was born in Union Township, Highland County, Ohio in 1947 and has been employed by the Kroger Company in a production management capacity since graduation from college. He has broadcast experience dating from 1963 until June of 1970 which included service at Stations WSRW (AM and FM) as an announcer-engineer; at Station WSRW Wilmington, Ohio as a "disc jockey" and doing news and interviews; as a "disc jockey" and doing news work at Stations WONE (AM and FM) Dayton, Ohio; and as a "disc jockey" at Station WUBE Cincinnati, Ohio. In addition to his duties as an officer and director, he would be employed in the proposed operation as an announcer-engineer for 30 hours per week.

32. *Ann M. Shaper*, the wife of Herbert E. Shaper, Jr. was born in Greenville, Ohio. Since their return to Wilmington, Ohio in August of 1969 she has devoted her time to the duties of secretary-treasurer of Clinton. During their prior period of residence in Wilmington, Mrs. Shaper was active in Boy Scout work and the Newcomers Club. Since their return she has become a member of the League of Women Voters, of the Daughters of the American Revolution and of a local school Farm and Home League. She would serve as traffic manager of the proposed station.

CONCLUSIONS

33. 5 KW has established that it is financially qualified to construct and operate its proposed station without reliance on revenues for a period of one year and, accordingly, it is financially qualified. To meet its first year construction and operating cost of $53,362 it has established the availability of a $50,000 loan with current assets adequate to establish the availability of the additional $3,362 required.

34. Clinton has also established that it is financially qualified to construct and operate its proposed station for the two year period required of it. Total cash assets exceed the required estimated construction costs and costs of the first year of operation. It has also effectively established that revenues during the first two years will provide sufficient funds to sustain a second year of operation. It would have left over from its first year of operation approximately $9,000 in available funds and has advertising commitments totalling over $70,000. The supporting data to these commitments in the form of the sworn statements of the prospective advertisers, their responses to interrogatories and their depositions demonstrate that the commitments were made in good faith by legitimate business firms which habitually do advertise their services or products. Provision is made in the contracts that either party may terminate the agreement with 28 days' notice, a factor chiefly relied on by 5 KW. The record shows, however, that a large majority of these potential advertisers do not expect to exercise their right to terminate as long as Clinton renders good service and some discernible results flow from this advertising.

35. Unquestionably some of the advertising commitments will not be fulfilled in their entirety. None of the potental advertisers recognized the possibility of either the station or advertiser ceasing business and there will be other causes. Clinton County has effectively shown, however, that it will receive substantial revenue over its first two years of operation. The revenue which has been substantiated, taking into consideration a reasonable margin for possible unfulfilled commitments, will provide additional money needed by Clinton to sustain its operation during its initial two year period. This is without regard to the factors of new and increased commitments though such may reasonably be expected, Clinton due to the time factor having limited its contacts to strictly local advertisers. Moreover, there is a further degree of assurance present in the broadcast experience present in the Clinton applicant. From this it is reasonable to believe that the advertisers will receive satisfactory service from the station and that their advertising messages will be presented in a manner that will lead to discernible results. The decision, therefore, must turn on the conclusions to be drawn under the comparative issue as a grant of either application would, under the specified issues, serve the public interest, convenience and necessity.

36. The *Policy Statement on Comparative Broadcast Hearings*, 1 FCC 2d 393, 5 RR 2d 1901, sets forth the two primary objectives toward which the process of comparison is to be directed as being first, the best practicable service to the public and second a maximum diffusion of control of the media of mass communications. The order of designation also directs that in this proceeding the areas and popula-

tions which would receive FM service of 1 mv/m or greater intensity, together with the availability of other primary aural service in such areas is to be a comparative factor. The superiority of Clinton in each of these three areas of comparison is established.

37. There is no significant difference in the total areas and populations which would receive FM service of 1 mv/m or greater intensity, the areas being identical in size with that served by Clinton having a population of only 57 persons greater than population of the area served by 5 KW. A nominal preference does, however, inure to Clinton under comparison of the availability of other primary aural services in these areas. Clinton would bring a second, third and fourth FM service of 1 mv/m intensity or greater to 3,234, 598 and 66 persons respectively, compared to 5, 16 and 75 persons, respectively, by 5 KW.

38. In the elements deemed relevant in assessing which of the applicants it is more probable will bring the best practicable service to the public, 5 KW made no showing under this factor. A substantial preference under this factor does inure to Clinton. Sixty percent of its voting stock and approximately 66% of the contingent voting preferred stock are owned by local residents of the city of Wilmington. The record shows participation in local civic activities by Mr. and Mrs. Shaper, holders of the noted 60% voting stock interest. And they, together with Mr. West, bring years of broadcast experience to the operation. The principals of 5 KW are all residents of Marietta, a city located approximately 125 miles from Wilmington and, insofar as is shown by the record, none would be associated with the day-to-day station operations.

39. A substantial preference goes to Clinton under the factor of diversification of ownership of media of mass communications. None of its principals is associated with any form of such media. In comparison elements of both local and area control are present in 5 KW, it presently being the licensee of the only broadcast facility licensed to Wilmington and its parent corporation being publisher of the only daily newspaper in Marietta and licensee of a standard broadcast station in that city. The superiority of Clinton being established in each of the aforenoted comparative factors, it is concluded that the public interest, convenience and necessity would be better served by a grant of the application of Clinton than by a grant of the application of 5 KW.

Accordingly, IT IS ORDERED, That unless an appeal from this Initial Decision is taken by a party to the proceeding, or the Commission reviews the Initial Decision on its own motion in accordance with the provisions of Section 1.276 of the Rules, the application herein of Clinton County Broadcasting Corporation is granted and the application of 5 KW, Inc. is denied.

FOREST L. MCCLENNING,
Administrative Law Judge,
Federal Communications Commission.

F.C.C. 73-909

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMENDMENT OF SECTION 73.202(b), TABLE OF ASSIGNMENTS, FM BROADCAST STATIONS (COLUMBUS, IND.)	Docket No. 19764 RM-1994

REPORT AND ORDER

(Adopted September 6, 1973; Released September 11, 1973)

BY THE COMMISSION: COMMISSIONER ROBERT E. LEE ABSENT.

1. The Commission has before it a Notice of Proposed Rule Making adopted June 6, 1973 (FCC 73-608, 38 Fed. Reg. 15856), inviting comments on a proposal to assign Channel 285A to Columbus, Indiana. The proceeding was instituted on the basis of a petition filed by Rush County Broadcasting Company (petitioner). Supporting comments were filed by petitioner. There were no oppositions to the proposal.

2. Columbus (population 27,141)[1] is the seat of Bartholomew County (population 57,022) and is located 42 miles southeast of Indianapolis. Channel 268 is presently assigned to Columbus and is licensed to Station WCSI-FM. There is also a daytime-only AM station (WCSI) at Columbus. Channel 285A can be assigned to Columbus without requiring any other changes in the FM Table of Assignments, and in conformance with the Commission's minimum mileage separation rule.

3. The preclusion study indicates that the proposed assignment to Columbus would foreclose future assignment only on Channel 285A; the adjacent channels are not affected. The precluded area would occur in and near Columbus. There are seven other communities within the precluded area, with populations less than that of Columbus, where Channel 285A could be assigned: two (13,352 and 4,582 populations) each have an FM Class B station; two (4,906 and 4,902 populations) are each served by an FM station located in a neighboring community; and the remaining three have a population less than 2,500 persons and also receive service from FM stations in neighboring communities.

4. In supporting comments petitioner asserts the proposed assignment would provide a second FM service and a competitive facility to the commonly-owned Stations WCSI and WCSI-FM in Columbus. It reaffirms its intentions to apply for the channel if assigned, and if authorized, to build the station promptly.

[1] Population figures cited are from the 1970 U.S. Census.

5. We note that such an assignment would intermix a Class A with a Class B channel at Columbus. However, it appears that petitioner was unable to find a Class B channel available for the community and is willing to operate on a Class A channel in competition with WCSI-FM which operates on Class B Channel 268. Although in some circumstances we are hesitant to intermix channels, in others we have done so. Under our assignment criteria Columbus has a population the size of which would warrant its being assigned a second FM channel. After consideration of the pertinent facts in this proceeding, we are of the view that the subject proposal has merit and that its adoption would serve the public interest.

6. Authority for the action taken herein is contained in Sections 4(i), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended.

7. Accordingly, IT IS ORDERED, That effective October 23, 1973, the Table of FM Assignments (Section 73.202(b)) IS AMENDED with respect to the city listed below as follows:

City:	*Channel No.*
Columbus, Ind	268, 285A

8. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Acting Secretary.*

F.C.C. 73-910

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMENDMENT OF SECTION 73.202(b), TABLE OF ASSIGNMENTS, FM BROADCAST STATIONS (OGALLALA, NEBR.)	RM-1970

MEMORANDUM OPINION AND ORDER

(Adopted September 6, 1973; Released September 10, 1973)

BY THE COMMISSION: COMMISSIONER ROBERT E. LEE ABSENT.

1. The Commission has before it a petition for rule making filed by Ogallala Broadcasting Company ("OBC") seeking the assignment of Channel 224A to Ogallala, Nebraska, an opposition filed by Industrial Business Corporation ("IBC"), and a reply to the opposition filed by OBC as well as its supplement to the petition.

2. The situation presented is simple and straightforward. OBC and IBC have competing applications in hearing, each seeking use of Channel 228A, the only FM channel now assigned to Ogallala. OBC urges the addition of Channel 224A in order to provide two full-time voices in the area and so that there would be a channel for each party. According to OBC this channel could be assigned without disturbing any existing assignments and without causing any significant preclusionary effect. OBC, licensee of a daytime-only station in Ogallala, indicated that it intended to apply for the new channel if its application lost out in the current hearing. IBC takes a different tack, raising what amounts to *Carroll* issue objections to the making of a second FM assignment. Not only would IBC not apply for this channel if it were assigned, it would oppose any use of it. The essence of its argument is that no independent operation would be able to compete with an AM–FM combination operated by OBC and that community advertising resources are inadequate to support three local stations.

3. Before proceeding with any proposal to assign a channel, we expect an indication from the proponent that it intends to utilize the channel promptly. In fact, we call upon the proponent to re-affirm its intentions in this regard when filing comments in response to a Notice of Proposed Rule Making. Here, one of the parties has no intention of applying for the channel, and the other is interested only should it be unsuccessful in a comparative hearing now under way. Obviously, it would have no use for the channel if it were successful. Thus, there is no assurance that the channel would ever be utilized, even if it were to be assigned. This being the case, no purpose would be served by proceeding with this matter at this time. In fact, going forward now would be in conflict with our usual procedures, and we have been offered no valid reason for deviating from them in this instance. At such time

as a party is interested in promptly proceeding to make use of the channel, we would then have a proper proposal before us. Since this is not now the case, there is no need to dispose of the various arguments which have been raised regarding the merits of the proposal.

4. Accordingly, IT IS ORDERED, That the subject proposal for rule making IS DENIED and that this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Acting Secretary.*

F.C.C. 73-914

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMENDMENT OF SECTION 73.202(b), TABLE OF ASSIGNMENTS, FM BROADCAST STATIONS (YORKTOWN, VA.)	Docket No. 19698 RM-1941

REPORT AND ORDER

(Adopted September 6, 1973; Released September 11, 1973)

BY THE COMMISSION: COMMISSIONER ROBERT E. LEE ABSENT.

1. The Commission has before it the Notice of Proposed Rule Making adopted in this proceeding on March 2, 1973, comments filed by the proponents, the Messrs. Eacho and Swartz ("E&S"), and reply comments filed by Hampton Roads Broadcasting Corporation ("Roads") licensee of Newport News, Virginia, Stations WGH(AM) and WGH-FM.

2. Roads had opposed the E&S petition which sought Channel 231 as a first assignment for Yorktown, Virginia, even before the Commission issued its Notice of Proposed Rule Making. One of the issues raised by Roads was resolved by the Commission when it adopted the Notice; others were deferred for later resolution. The issue that was resolved was the contention by Roads that Yorktown was not a community within the meaning of our rules. We held otherwise, finding that it had the requisite community of interests on the part of an identifiable population grouping. E&S have provided further support for this conclusion in their comments, and even Roads apparently has acquiesced in this view to which we continue to adhere.

3. E&S had submitted sufficient data to allay our concern on the matter of preclusionary effect stemming from the proposed assignment, so that question is no longer before us. What remain before us are a series of questions relating to the assigning of a Class B channel to Yorktown in the absence of a Class A channel to use instead. As we pointed out in the Notice, where the facts of the case warrant, we have assigned Class B channels to various smaller communities even though such was not our usual practice. To help us evaluate the situation presented by the case, we called for more data on the approximate boundaries of Yorktown, as well as its population. From the information we have received it appears that Yorktown is generally considered to encompass the Grafton and Nelson census districts, with a total population of 14,593. In a number of cases we have made Class B assignments to communities in Virginia smaller than Yorktown, and in fact in two cases have provided two channels each to communities of Yorktown's size. Here, a Class A channel is unavailable to bring Yorktown a first local service, a matter of high priority, so that this channel represents

Yorktown's only possible channel. Further support for making the assignment is found in the fact that it would make it possible to bring a first FM service to 5,371 persons and a second FM service to 7,628 additional persons.[1]

4. Roads questions the need for a local service in Yorktown, alleging that various area stations cover matters of local interest. Such coverage is not a substitute for a local transmission service, as a station whose principal obligation is to serve another community cannot be expected to provide the same service as would a local station. At most, the attention to Yorktown's needs by outside stations could indicate that the need for a local station was somewhat reduced; it does not provide any basis in itself for finding that the assignment should not be made. Finally, Roads questions the ability of the area to support a station unless it tapped advertising support from outside the county. Needless to say, there is never a guarantee that a station would be able to turn a profit or be able to survive, but that is not the question before us. E&S are willing to undertake the risk and nothing now before us suggests that Yorktown and the rest of the coverage area could not provide enough advertising support to sustain a station. There is nothing improper about obtaining advertising from outside the principal community, and if Roads is suggesting a detrimental impact on its own operation, it has failed to provide a meaningful basis for concern.

5. From the information before us, we have concluded that the public interest would be served by making the proposed assignment. From all indications, the assignment would have no significant negative impact. It would bring about important benefits by providing a first local service to a community of some size[2] and by providing significant numbers of people a first or second FM service.

6. Accordingly, IT IS ORDERED, That pursuant to authority found in Sections 4(i), 303, and 307(b) of the Communications Act of 1934, as amended, the FM Table of Assignments (Section 73.202(b) of the Commission's Rules and Regulations) IS AMENDED effective October 23, 1973, insofar as the community named below is concerned, to read as follows:

City:	*Channel No.*
Yorktown, Va	231

7. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Acting Secretary.*

[1] These figures were obtained from Commission study of the situation and not from the E&S showing that listed a higher figure for first service.
[2] Even though the transmitter would have to be located about 11 miles north of Yorktown, the station would still be able to provide city-grade coverage to the community.

F.C.C. 73-915

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMENDMENT OF SECTION 73.202(b), TABLE OF ASSIGNMENTS, FM BROADCASTING STATIONS (EAST MOLINE, ILL.)	Docket No. 19762 RM-1973

REPORT AND ORDER

(Adopted September 6, 1973; Released September 12, 1973)

BY THE COMMISSION: COMMISSIONER ROBERT E. LEE ABSENT.

1. The Commission has before it a Notice of Proposed Rule Making adopted June 6, 1973 (FCC 73-606, 38 Fed. Reg. 15739) in the above-captioned proceeding, inviting comments on a proposal to assign Class B Channel 267 to either Moline or East Moline, Illinois. The proceeding was instituted on the basis of a petition filed by Upper Rock Island Holding Company, Inc. (petitioner), proposing to assign Channel 267 to East Moline, Illinois.

2. East Moline (population 20,832)[1], located in Rock Island County (population 166,734), is part of the Davenport-Rock Island-Moline Urbanized Area (population 266,199). It presently has one daytime-only AM station (WDLM) and no FM assignments. In addition to the AM station at East Moline, there are 5 AM stations and 4 FM stations in the urbanized area, which are as follows: Davenport (pop. 98,469) has 3 AM stations and 2 FM stations (Channels 279, 293); Rock Island (pop. 50,166) has 1 AM station and 1 FM station (Channel 255); and Moline (pop. 46,237) has 1 AM station and 1 FM station (Channel 245).

3. Interested parties were invited to comment on the Commission's proposal on or before July 20, 1973, and could reply to such comments on or before August 10, 1973. Supporting comments were filed by petitioner and by the Moody Bible Institute (Moody), licensee of daytime-only AM station WDLM, East Moline, Illinois. There were no opposing comments filed.

4. In the Notice, we stated that the petitioner's engineering statement had indicated the proposed assignment would not foreclose future assignments on any of the six adjacent channels and that preclusion on Channel 267 would occur in a very limited area some nine miles northeast of East Moline, the only area where a station on Channel 267 could be located. Petitioner further had indicated that a station operating from this site with a maximum Class B facility would be able to place a 70 dBu signal or greater over the principal cities of the urbanized area. We stated that it appeared the channel

[1] All population figures cited are from the 1970 U.S. Census unless otherwise specified.

could be assigned to any one of these cities, and if assigned to Davenport, Rock Island, or Moline it could be used at East Moline under the provisions of Section 73.203(b). We also pointed out that in view of their populations and present channel assignments, and in view of the fact that Moline is located immediately adjacent to East Moline we were proposing assignment of the channel to either of the latter two communities.[2]

5. Petitioner points out in his supporting comments that there is a significantly greater need for an FM assignment at East Moline than there is in Moline. It states that there is only one daytime-only AM station (WDLM) and no FM outlet and that by way of contrast, there are an AM and an FM station in Moline. Moreover, it avers that there is a clear disparity in FM assignments to the various Quad Cities, since each of the other Quad Cities (Davenport, Rock Island and Moline) has at least one FM assignment and East Moline has none. Petitioner contends that a separate FM assignment in East Moline would be a definite plus factor and would increase the stature of the community and could well stimulate additional economic growth. It states that it intends to apply for the channel if assigned, and, if authorized, will promptly build the station.

6. The Moody Bible Institute (Moody), in its supporting comments, states that it would be inequitable to deprive East Moline of a single FM channel in order to assign a third channel to Davenport, or a second channel to Rock Island or to Moline. It contends that if Channel 267 were assigned to Davenport, Rock Island, or Moline, an East Moline applicant for this channel would have to compete with other applicants for this frequency who may specify the larger community of the assignment as their station location, whereas if the assignment is made to East Moline, applicants cannot specify Davenport, Rock Island or Moline as their station's location. Moody states that if the assignment is made to East Moline, it intends to file an application for a construction permit and if such permit is granted, it will promptly build the station.

7. We have given careful consideration to the proposal and comments filed in this proceeding, and believe that Channel 267 should be assigned to East Moline, Illinois. An interest has been shown for its use in East Moline whereas no interest has been shown in having it assigned to Moline or to any other community. The assignment of Channel 267 to East Moline would be in the public interest because it would provide for a first local FM service to a community of 20,832 persons. Further, since the preclusionary effect of the proposed assignment is limited to Channel 267 and the use of the channel is confined to a small area northeast of East Moline, this assignment would result in the efficient use of FM frequencies.

8. Authority for the adoption of the amendment contained herein appears in Sections 4(i), 303, and 307(b) of the Communications Act of 1934, as amended.

9. In view of the foregoing, IT IS ORDERED, That effective Oc-

[2] The Notice set forth information furnished by petitioner concerning the economy, government, and other aspects of East Moline which will not be repeated here.

tober 23, 1973, Section 73.202(b) of the Commission's Rules, the FM Table of Assignments IS AMENDED to read as follows:

City:	Channel No.
East Moline, Ill	267

10. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Acting Secretary.*

F.C.C. 73-943

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMENDMENT OF SECTION 73.202(b), TABLE OF ASSIGNMENTS, FM BROADCAST STATIONS (RICHLANDS, VA., AND WELCH, W. VA.)	Docket No. 19677 RM-1949, -1911

REPORT AND ORDER

(Adopted September 11, 1973; Released September 14, 1973)

BY THE COMMISSION: COMMISSIONER ROBERT E. LEE ABSENT.

1. The Commission has before it the Notice of Proposed Rule Making in this proceeding adopted January 31, 1973 (FCC 73-129, 38 Fed. Reg. 3998) and responsive comments filed by Clinch Valley Broadcasting Corporation ("Clinch") and by Pocahontas Broadcasting Company ("Pocahontas").

2. Clinch and Pocahontas each seek the assignment of Channel 288A. Clinch wishes it assigned to Richlands, Virginia, and Pocahontas to Welch, West Virginia. Neither the showings of the parties nor our own study has indicated the availability of another channel for assignment to either community. Thus, even though there is merit in both of the proposals, it will be possible to accommodate only one of them. In essence, then, it is necessary to make a comparison between them and to determine which possible use would be preferable.

3. Before examining the merits of the conflicting proposals, there is one procedural matter to resolve. That involves the filing of supplemental pleadings by each of the parties. Pocahontas filed a separate motion seeking acceptance of its pleadings; Clinch's request for consideration of its supplemental pleading was contained in the pleading itself. Clinch has opposed the Pocahontas motion. In its motion Pocahontas asserts that Clinch introduced new engineering data in a supplemental pleading to which Pocahontas should be entitled to respond as it did by the filing of its pleading. Alternatively, Pocahontas seeks rejection of both sets of supplemental pleadings. Clinch's response is that it was Pocahontas that first introduced new issues in its reply comments, something contrary to applicable procedural requirements.

4. At times we have authorized the acceptance of supplemental pleadings, and indeed, in some instances, justice clearly requires such action. Nevertheless, we do not do so with regularity lest we undermine our processes. Thus, a substantial showing is required before we could make an affirmative finding. In this case, Clinch's argument is only that it too is entitled since Pocahontas was the first to introduce new data in its reply comments. Nowhere is there a real explanation for the late raising of the new material or any indication it could not have been raised earlier. Under these circumstances we do not intend to accept

the late-filed pleadings nor to accept any new showing first advanced in a reply. One other point needs to be made in this connection. All of the improperly raised matters related to engineering issues. Although the issues are important ones, most of the showings would have been unsatisfactory even if they had been submitted properly. This being the case, the Commission has conducted its own study, which is discussed below.

5. Although extensive pleadings have been filed, the questions to be addressed are relatively few. Each of these questions however, has been given lengthy attention, particularly the matter of first FM service that the proponents think one or the other possible assignment might provide. The simple answer to this point is that neither would be able to provide a first FM service. This determination is based on the Commission's own calculations and no substantial evidence has been submitted to support a contrary conclusion.[1] Our calculations, however, do show a notable difference between the proposals in terms of their being able to provide a second FM service. A Richlands station could provide a second FM service to approximately 50% of the area it would cover, in contrast to a figure of about 5% for a Welch operation. We shall return to this distinction subsequently.

6. Richlands has a population of 4,843, and the county in which it is located (Tazewell) has a population of 39,816. The only local service in Richlands is provided by a daytime-only AM station. Welch has a population of 4,149 and McDowell County in which it is located, has a population of 50,666. Welch is served by a daytime-only AM station and by a Class IV full-time station. Since neither of these communities has an FM assignment,[2] a strong case could be made for making a first FM assignment to either of them. Lengthy description of local activities is not required here because we do not question the ability of either community to support a station. Nor need we delve into the particular of their economies or population growth or decline. The fact is that both are in a coal mining region and have felt the impact of the decline in coal mining and its recent resurgence. Both are some distance from larger cities in the region. Thus in overall terms, their general situations are similar.

7. Of the distinguishing factors, the only ones that favor Welch are the larger size of its county (of which it is the seat) and the county's lack of an FM assignment. The situation affecting the county is not the principal basis upon which an assignment is premised. Rather, an assignment is made to a particular community, based on its need and on the ability of a station there to bring a needed service to its coverage area. In these terms, Richlands is to be preferred. It is larger; it has fewer stations and locating a station there would mean the bringing of a second FM service to a far larger area. We also note that Welch has a daily newspaper, Richlands only a weekly. All of these points are of significance and in sum, they make the case clear.

[1] The listening test using a single FM car radio on which Pocahontas attempted to rely is without weight, as is its speculation on shadowing based on assumptions and lacking in data or calculations of any type.

[2] Welch once had an FM station operating on a channel assigned to Bluefield, West Virginia. That station was moved some years ago to Bluefield, Virginia. We do not see in this departure of the station from Welch any basis for different treatment than the present case would otherwise merit.

Our view is not altered by the fact that Richland's county already has FM stations, since they are well removed from Richlands. The presence or absence of other services in the county is of importance, but that importance declines sharply with distance. Likewise the suggestion of Pocahontas that an AM station could be built in Richlands is not only speculative, but the showing supporting the assertion was defective as well. Richlands may not be as centrally located in its county as is Welch, but this is of little significance since virtually all of Welch's proposed coverage area already receives two FM services. The balance is clear: Richlands is the preferable location for the assignment.[3]

8. Accordingly, IT IS ORDERED, That effective October 26, 1973, the FM Table of Assignments (Section 73.202(b)) IS AMENDED to read as follows for the community listed:

City:	*Channel No.*
Richlands, Virginia	288A

9. IT IS FURTHER ORDERED, That Pocahontas' Motion to Accept Additional Pleading IS DENIED and all unauthorized pleadings by both parties ARE REJECTED and those portions of the Pocohontas reply comments which, contrary to our rules, raised new issues ARE STRICKEN.

10. Authority for the actions taken herein is contained in Sections 4(i), 303 and 307(b) of the Communications Act of 1934, as amended. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Acting Secretary.*

[3] In order to meet spacing requirements a site five miles northeast of the community would have to be used. Clinch has satisfactorily established that it would be able to provide the requisite city coverage from such location, without suffering significant shadowing problems.

F.C.C. 73R–320

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of GILROY BROADCASTING CO., INC., FORT COLLINS, COLO. BEEF EMPIRE BROADCASTING CO., FORT COLLINS, COLO. For Construction Permits	Docket No. 19681 File No. BPH–7434 Docket No. 19682 File No. BPH–7496

MEMORANDUM OPINION AND ORDER

(Adopted September 7, 1973; Released September 13, 1973)

BY THE REVIEW BOARD:

1. This proceeding, involving the mutually exclusive applications of Gilroy Broadcasting Company, Inc. (Gilroy) and Beef Empire Broadcasting Company (Beef Empire) for new FM broadcast stations at Fort Collins, Colorado, was designated for hearing by Commission Order, FCC 73–155, released February 14, 1973. Now before the Review Board is a motion to enlarge issues, filed March 9, 1973, by Beef Empire, requesting the addition of Rule 1.65, candor, *ex parte*, ineptness, financial, and *Suburban* issues against Gilroy.[1] Subsequent to the filing of Beef Empire's motion, however, the parties, on June 11, 1973, submitted to the Administrative Law Judge in this proceeding a Joint Request for Approval of Agreement and Dismissal of Application, whereby Gilroy's application would be dismissed and, other conditions being met, Beef Empire's application would be granted. By Memorandum Opinion and Order (FCC 73M–961, released August 21, 1973), the Presiding Judge approved the request and dismissed Gilroy's application. However, the provision in the agreement for reimbursement of expenses to Gilroy was approved, "contingent upon favorable resolution of any disqualifying issues pending before the appellate levels." In view of the Presiding Judge's Order, Beef Empire's motion is moot insofar as it requests financial and *Suburban* issues against Gilroy. Those portions of the motion will therefore be dismissed.[2] The other allegations must be considered, though, before Gilroy may be reimbursed for its expenses. See *St. Cross Broadcasting, Inc.*, 39 FCC 2d 512, 26 RR 2d 939 (1973).

[1] The following related pleadings are also before the Review Board: (1) errata to motion to enlarge issues, filed March 19, 1973, by Beef Empire; (2) Broadcast Bureau's comments, filed March 28, 1973; (3) opposition, filed March 29, 1973, by Gilroy; (4) supplement to (3), filed April 11, 1973, by Gilroy; (5) reply, filed April 17, 1973, by Beef Empire; (6) erratum, filed April 17, 1973, by Gilroy; (7) motion to strike, filed April 20, 1973, by Beef Empire; and (8) opposition to (7), filed April 24, 1973, by Gilroy.

[2] Likewise, Beef Empire's motion to strike Gilroy's supplement to opposition to motion to enlarge issues (see note 1, *supra*) will be dismissed because the supplement relates to the requested financial issue.

2. In support of its request for Rule 1.65 and candor issues, Beef Empire asserts that Gilroy failed to timely report to the Commission that John A. Broderick, vice-president, director and 50% stockholder of Gilroy, had acquired a franchise for a nationally franchised cleaning specialty firm. The franchise was acquired on July 18, 1972, but was not reported until February 1, 1973. Beef Empire argues that Broderick's acquisition of the cleaning franchise raises serious questions concerning whether Broderick will still be employed as the station's proposed "*full-time* Sales Manager" and whether the franchise will affect Broderick's ability to meet his financial commitments to Gilroy.[3] Beef Empire also suggests that a candor issue is warranted because Broderick acquired his franchise only two weeks after Gilroy filed an amendment indicating Broderick's full-time participation as sales manager and setting forth his "current" financial position, but the amendment did not indicate Broderick's intention to purchase the franchise. Both Gilroy and the Broadcast Bureau oppose the issues.[4] The Review Board does not believe that the failure to report Broderick's acquisition of the cleaning franchise warrants the addition of a Rule 1.65 issue. "The Board has frequently refused to specify a Section 1.65 issue where, as here, the violations were unintentional and there was no attempt to mislead or conceal, no pattern of violations has been shown, and the violation was of questionable significance." *Auburn Publishing Company*, 34 FCC 2d 134, 24 RR 2d 29 (1972). Although Gilroy did not timely file its amendment, it did voluntarily report Broderick's acquisition; no pattern of violations has been shown and the failure to report Broderick's acquisition of the franchise is of questionable significance. In this regard, Gilroy has shown in its opposition pleading that Broderick's financial status will not be adversely affected by the purchase;[5] and Beef Empire presented no affidavit refuting Broderick's affidavit, submitted with Gilroy's opposition, in which he avers that he will be the proposed station's full-time sales manager. Finally, we disagree with Beef Empire that Gilroy lacked candor with the Commission because the amendment it filed two weeks prior to Broderick's acquisition of the franchise did not mention the acquisition. Beef Empire presented no affidavits or other supporting documentation which would suggest that Gilroy knew of the impending acquisition and that it deliberately omitted it from the amendment.[6] See Section 1.229(c) of the rules.

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[3] As petitioner notes, a bank letter dated June 20, 1972, from the Greeley National Bank, conditions its loan to Gilroy upon "certain noncash items appearing on the financial statements of John Broderick dated June 19, 1972 and LeRoy Wolfe, dated June 14, 1972, to collateralize the loan." Therefore, petitioner argues, Broderick's present financial investment raises questions such as "was it necessary [for Broderick] to put up collateral and if so, what? Did Broderick take out a loan, and if so, from whom, under what terms, and what affect would it have on present loan commitments?"

[4] According to the Bureau, a Rule 1.65 issue would be warranted on a comparative basis only.

[5] Gilroy asserts in its opposition that the acquisition would not materially affect Broderick's personal financial status because Broderick's June 19, 1972 financial statement shows that he has $190,000 in liquid assets and $5,000 in current liabilities, and the cost of the franchise was only $24,000.

[6] In its reply pleading, Beef Empire suggests that a Rule 1.65 or candor issue is warranted for reasons not alleged in the original motion. The Review Board has a well established policy of not considering new matter raised for the first time in a reply pleading; therefore, we will not consider the foregoing allegations. See *Industrial Business Corp.*, 40 FCC 2d 69, 26 RR 2d 1447 (1973).

3. In support of its request for *ex parte* and ineptness issues, Beef Empire asserts that Charles M. Wolfe, secretary-treasurer, director, 10% owner and proposed general manager of Gilroy, wrote a letter, dated January 19, 1972, addressed to Congressman Wayne Aspinal, member of the United States Congress for the Fort Collins area. In Beef Empire's opinion, this conduct violated the Commission's *ex parte* rules. Beef Empire points out that, at the time Wolfe wrote the letter, this proceeding was in a "restricted" posture. In the letter, petitioner continues, Wolfe discussed the advantages of a grant of Gilroy's applicaton (for example, that it intended to operate a "station designed in the true public interest") as opposed to Beef Empire, which, Wolfe said, merely plans to duplicate its AM programming. Beef Empire insists that the letter was intended to affect the decision-making processes in this proceeding. Both Gilroy and the Bureau oppose the issue. The Board does not believe that an *ex parte* issue is warranted.[7] The Commission has defined an "*ex parte* presentation" as "any written presentation, made to decision-making personnel by any person, which is not served on the parties to the proceeding." Section 1.1201(g) of the Rules. A copy of the letter was served on Beef Empire at the time it was sent to the Congressman and Beef Empire has not denied receipt of the letter; therefore, the letter was not an "*ex parte* presentation" within the meaning of the Rules (Section 1.1201(g) of the Rules).[8] *Cf. RKO General, Inc.* (WNAC–TV), 37 FCC 2d 113, 25 RR 2d 145 (1972).

4. Accordingly, IT IS ORDERED, That motion to strike, filed April 20, 1973, by Beef Empire Broadcasting Co. IS DISMISSED; and

5. IT IS FURTHER ORDERED, That the motion to enlarge issues, filed March 9, 1973, by Beef Empire Broadcasting Co., IS DISMISSED insofar as it requests the addition of financial and *Suburban* issues against Gilroy Broadcasting Company, Inc., and IS DENIED in all other respects.

6. IT IS FURTHER ORDERED, That this proceeding is TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Acting Secretary.*

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[7] Although Beef Empire requests an ineptness issue, it did not present any allegations or arguments in support thereof. Therefore, the request will be denied.

[8] We note in passing, however, that a letter not served on other parties to a Congressman pertaining to an application in a restricted proceeding could constitute an *ex parte* presentation forbidden by the Rules. See Rule 1.1225, which states that "no person shall solicit or encourage others to make any presentation which he is himself prohibited from making under the provisions of this subject." See also *The Corinth Broadcasting Co., Inc.*, 9 FCC 2d 864, 11 RR 2d 115 (1967). However, in view of the fact that a copy of the letter was served on Beef Empire, there is no need for an issue.

F.C.C. 73-937

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of THE HAWAIIAN TELEPHONE CO. Revisions to Its Tariff F.C.C. No. 10 Providing for an Increase in the Rates Applicable to Wide Spectrum (CATV Channel Distribution) Services	Docket No. 19819

MEMORANDUM OPINION AND ORDER

(Adopted September 11, 1973; Released September 13, 1973)

BY THE COMMISSION: COMMISSIONER ROBERT E. LEE ABSENT.

1. On April 27, 1973, The Hawaiian Telephone Co. (Hawtel) filed revisions to its Tariff F.C.C. No. 10 [1] under Transmittal No. 344 which are currently scheduled to become effective September 14, 1973. The revisions provide for substanital increases to the monthly rates and non-recurring charges applicable to Hawtel's "Wide Spectrum Services" (CATV channel distribution) offering. In the economic data submitted pursuant to Section 61.38 of our rules, Hawtel estimates that the proposed increases will provide additional revenues of approximately $326,000 annually (to produce an overall rate of return for the service of 9%).

2. On May 22, 1973, The Hawaiian Cable Television Association (HCTA), a trade association representing the five cable television systems which use Hawtel's Wide Spectrum Services, filed a petition for rejection or suspension of the above-referenced tariff revisions. HCTA seeks rejection of the revisions on the grounds that Hawtel failed to comply with the notice requirements of Sections 61.32 and 61.58 of our rules and regulations; that the economic support data filed pursuant to Section 61.38 was inadequate and incomplete; and that Hawtel failed to demonstrate compliance with the Cost of Living Council's Economic Stabilization Program ("Phase III") regulations. Alternatively, HCTA seeks suspension and investigation of the revisions on the grounds that the claimed rate base is "grossly overstated" (in connection with this point, petitioner challenges the valuation of assets, charges to depreciation and provision for working cash); that the 9% rate of return has not been justified; and that the proposed rate increases are intended to intimidate customers into buying the facilities at an inflated price.

3. In its reply, Hawtel denied the allegations in the HCTA petition and attacked the petition itself on two grounds. First, Hawtel argued

[1] Specifically, 2nd Revised Page 20. Supplement No. 4 defers the effective date of the revisions until September 14, 1973.

that the petition should be dismissed for failure to comply with Section 1.44(a) of the rules, 47 C.F.R. § 1.44(a) (1972), which prohibts the joinder of a request requiring Commission action (here, a request for suspension of the revisions) with a request for action by the staff under delegated authority (rejection of the revisions). Second, Hawtel believes the petition exceeds the bounds of permissible advocacy in charging it with, among other things, "extortionist tactics" in addition to generally impugning its character.[2] For this reason Hawtel urged that the petitioner be required to supply evidence to prove its charges or that the offending language be stricken from the petition.

4. We agree with Hawtel that the HCTA petition is procedurally defective under our rules. We have previously indicated that we intend to enforce the impermissive joinder rules.[3] Therefore, under section 1.44(e) we shall order the petition to be dismissed. With respect to the second challenge to the petition, since we have ordered it dismissed *in toto*, we do not need to rule on the relief requested by Hawtel. However, we regard it as inappropriate for parties to use extreme accusatory terminology unless they advance a firm factual basis for their charges.

5. Although we have concluded that HCTA's petition should be dismissed on procedural grounds, on our own motion we have made an examination of the tariff revisions. The proposed increase in monthly charges for CATV channel distribution service amounts to approximately 100%. We note that this is the first increase in rates which Hawtel has sought since we asserted jurisdiction over the service, *Hawaiian Telephone Co.*, 16 F.C.C. 2d 308 (1969). Hawtel states that the return, after tax, for calendar year 1972 was .62% and that it has historically earned a low rate of return for the service. In view of this low rate of return, it would appear that some revenue relief would be appropriate. However, we are of the opinion the magnitude of the increases presents questions of lawfulness and reasonableness which cannot be resolved on the pleadings now before us.

6. In view of the foregoing, we are unable to conclude that all features of the tariff revisions are just and reasonable within the meaning of section 201(b) of the Act. We shall therefore designate the revisions for hearing and shall suspend the effectiveness thereof and enter an accounting order providing for possible refund. However, in view of the currently low rate of return being earned on this service, the concomitant possibility that other Hawtel customers are being forced to bear part of the costs for Wide Spectrum Service, and the protection afforded customers by the accounting order we are providing herein, we shall suspend the revisions for a period of one day.

7. In the present case, we believe it desirable that the Administrative Law Judge render an Initial Decision and that the trial staff of the Common Carrier Bureau be separated from both the Commission and the Administrative Law Judge. As we have previously explained, 32 F.C.C. 2d 89, 90 (1971), the separation of the trial staff simply means that such staff: (1) will not make any oral presentations to the Administrative Law Judge or the Commission without the other parties

[2] HCTA Petition, at pp. 2, 8, 19.
[3] *See* 41 F.C.C. 2d 232 (1973), 39 F.C.C. 2d 637, 639 (1973).

being present, and (2) will not make any written presentations to the Administrative Law Judge or the Commission which are not served on the other parties.

Accordingly, IT IS ORDERED, That, pursuant to the provisions of Sections 4(i), 4(j), 201, 204 and 403 of the Communications Act of 1934, an investigation is instituted into the lawfulness of the above-referenced tariff revisions filed by The Hawaiian Telephone Co. including any cancellations, amendments or reissues thereof; and no changes shall be made in such tariff schedules during the pendency of this proceeding without prior approval by the Commission;

IT IS FURTHER ORDERED, That, pursuant to the provisions of Section 204 of the Act, the above tariff revisions ARE HEREBY SUSPENDED until September 15, 1973, and that The Hawaiian Telephone Co., as to the subject increased monthly and non-recurring charges and until further order of the Commission, shall keep accurate account of all amounts received by reason of such increases, specifying by whom and in whose behalf such amounts were paid, and upon completion of the hearing and decision therein, the Commission may by further order require the refund thereof with interest, pursuant to Section 204 of the Act, and the carrier shall file such reports on the amounts accounted for as aforesaid as the Chief, Common Carrier Bureau shall require;

IT IS FURTHER ORDERED, That, without in any way limiting the scope of the investigation, it shall include consideration of the following issues:

(1) Whether the charges, classifications, practices, and regulations published in the above-referenced tariff are or will be unjust and unreasonable within the meaning of Section 201(b) of the Act;

(2) If any of such charges, classifications, practices, and regulations are found to be unlawful, whether the Commission, pursuant to Section 205 of the Act, should prescribe charges, classifications, practices or regulations for the service governed by the tariff, and if so, what should be prescribed;

(3) The amounts properly includable in the rate base for Wide Spectrum Service, including the net investment of The Hawaiian Telephone Co. in property used and useful in the provision of that service;

(4) The amounts properly includable as expenses and taxes incurred by The Hawaiian Telephone Co. in the provision of Wide Spectrum Service;

(5) The propriety of the plant and depreciation accounting performed by The Hawaiian Telephone Co. in connection with the Wide Spectrum Service since the institution of that service;

(6) The fair rate of return required by The Hawaiian Telephone Co. on its allowable rate base associated with Wide Spectrum Service determined pursuant to the foregoing as well as upon any other alternative approaches that may be appropriate; and

(7) From the foregoing issues three through six, what revenues are required to give The Hawaiian Telephone Co. a fair rate of return for Wide Spectrum Service (as determined in issue six above);

IT IS FURTHER ORDERED, That, the hearing in this proceeding shall commence at the Commission offices in Washington, D.C. at

a time to be specified by the presiding Administrative Law Judge; and that such Administrative Law Judge shall, upon the closing of the record prepare an initial decision which shall be subject to the submission of exceptions and requests for oral argument as provided in 47 C.F.R. 1.276 and 1.277, after which the Commission shall issue its decision as provided in 47 C.F.R. 1.282 and that the trial staff of the Common Carrier Bureau be separated both from the Commission and from the Administrative Law Judge;

IT IS FURTHER ORDERED, That, The Hawaiian Telephone Co. is named party respondent to the investigation ordered herein and that the Hawaiian Cable Television Association is hereby GRANTED leave to intervene, upon filing within ten (10) days of the release of this order a notice of intention to participate, and shall be permitted to appear and adduce any relevant and probative evidence which bears on the issues specified for investigation herein; and

IT IS FURTHER ORDERED, That the above-referenced petition to reject or suspend filed by The Hawaiian Cable Television Association is, for the reasons cited herein, DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Acting Secretary.*

F.C.C. 73R-323

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of LAKE RADIO, INC., MOUNT DORA, FLA. GOLDEN TRIANGLE BROADCASTING CO., MOUNT DORA, FLA. For Construction Permits	Docket No. 19701 File No. BP-19169 Docket No. 19702 File No. BP-19244

MEMORANDUM OPINION AND ORDER

(Adopted September 12, 1973; Released September 17, 1973)

BY THE REVIEW BOARD:

1. This proceeding, involving the mutually exclusive applications of Lake Radio, Inc. (Lake Radio) and Golden Triangle Broadcasting Co. (Golden Triangle) for authority to operate the facilities of former Station WYYD, Mount Dora, Florida, was designated for hearing under various issues, including, *inter alia*, a *Suburban* issue against Golden Triangle, by Commission Memorandum Opinion and Order, FCC 73-260, 38 FR 7357, published March 20, 1973. Before the Review Board is a petition to enlarge issues, filed April 26, 1973, by Lake Radio,[1] seeking addition of the following issue:

> To determine whether Golden Triangle Broadcasting Company misrepresented facts to the Commission in connection with its survey of community leaders, and if so, to determine the effect of this conduct on the qualifications of Golden Triangle Broadcasting Company to be a Commission licensee.

2. In support of its request for a misrepresentation issue, Lake Radio submits eight affidavits and an unsworn letter; in each the signatory states that he could not recollect ever speaking with representatives of Golden Triangle concerning community problems. Petitioner points out that these nine persons are listed among the 45 community leaders and members of the general public allegedly contacted by Golden Triangle as part of its efforts to ascertain community needs, and argues that the misrepresentations may be far more extensive. The Broadcast Bureau, in its comments, supports the addition of the issue absent a satisfactory explanation by Golden Triangle.[2]

[1] Also before the Review Board are the following related pleadings: (a) motion for acceptance of late-filed pleading, filed April 26, 1973, by Lake Radio; (b) Broadcast Bureau's comments, filed May 9, 1973; (c) opposition, filed May 23, 1973, by Golden Triangle; (d) supplement to opposition, filed July 24, 1973, by Golden Triangle; and (e) reply, filed August 24, 1973, by Lake Radio.

[2] However, the Bureau argues that the unsworn letter from Jean Jedlicka, on behalf of the Mount Dora Chamber of Commerce, would not, standing alone, warrant a misrepresentation issue since the statement is not under oath and no showing has been made that she speaks from "personal knowledge" of the facts, as required by Section 1.229(c).

3. In opposition, Golden Triangle attaches clarifying affidavits of six of the affiants relied on by Lake Radio, each stating, in essence, that the affiant had, in fact, discussed community problems with Golden Triangle. Two of the clarifying affidavits explain that the affiants were misled as to the meaning of the statements that they had been asked to sign by Lake Radio and another states that he had not understood the explanations given by Lake Radio when he signed his statement. In addition, Golden Triangle submits the affidavits of Claude Gordon and Robert Smith who allegedly accompanied, on separate occasions, one of the principals of Golden Triangle when discussion between the principal and the parties who had signed the Lake Radio statements took place. These affidavits allegedly describe the details of the ascertainment survey. In reply, Lake Radio attaches the affidavits of its President explaining that his instructions must have been misunderstood by two of the affiants and that the other four statements seem to reflect a change in the individuals' recollections.

4. The Review Board will deny the requested issue.[3] As noted above, Golden Triangle has in its responsive pleading adequately answered or rebutted, through clarifying affidavits, six of the nine disputed contacts. Those six appear to have resulted from confusion concerning the questions asked by petitioner. The seventh disputed contact, supported by an unsworn letter, must be disregarded since the letter is not in the form of an affidavit as required by Section 1.229(c). See *Eastern Broadcasting Corp.*, 29 FCC 2d 472, 21 RR 2d 1147 (1971), and *Alvin L. Korngold*, 32 FCC 2d 471, 23 RR 2d 267 (1971). As for the two unrebutted affidavits, we do not regard these as an adequate basis for the addition of a misrepresentation issue. See *Childress Broadcasting Corp. of West Jefferson*, FCC 70–1032, 20 RR 2d 335, 337; and *Home Service Broadcasting Corp.*, 24 FCC 2d 192, 19 RR 2d 347 (1970). Compare *California Stereo, Inc.*, 39 FCC 2d 401, 26 RR 2d 887 (1973). As these cases indicate, where it appears that one or two interviewees out of 45 are unable to remember being interviewed as a result of the passage of time or the cursory nature of the contact or even where there have been one or two inadvertent errors in the listing of community leaders, a misrepresentation issue is not warranted. And petitioner's allegations provide no basis for concluding that Golden Triangle intentionally falsified two of its 45 contacts. Accordingly, for the foregoing reasons and in view of petitioner's failure to rebut the explanations offered in Golden Triangle's opposition, the requested issue will be denied. However, should evidence adduced at the hearing under the designated *Suburban* issue indicate a substantial basis for a misrepresentation issue, Lake Radio may at that time file an appropriate request for enlargement. See *WPIX, Inc. (WPIX)*, 23 FCC 2d 245, 19 RR 2d 182 (1970).

[3] Lake Radio, Inc.'s motion for acceptance of late-filed pleading will be granted. The petition was filed approximately three weeks after the time for filing expired, petitioner contends that the necessary affidavits could not be obtained earlier, and neither Golden Triangle nor the Bureau oppose consideration of the pleading on the merits.

5. Accordingly, IT IS ORDERED, That the motion for acceptance of late-filed pleading, filed April 26, 1973, by Lake Radio, Inc., IS GRANTED, and the late-filed pleading IS ACCEPTED; and

6. IT IS FURTHER ORDERED, That the petition to enlarge issues, filed April 26, 1973, by Lake Radio, Inc., IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Acting Secretary.*

42 F.C.C. 2d

F.C.C. 73-906

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of LANFORD TELECASTING CO., INC. (K11KK), NATCHITOCHES, LA. For Construction Permit to Make Changes	File No. BMPTTV-757

MEMORANDUM OPINION AND ORDER

(Adopted September 6, 1973; Released September 13, 1973)

BY THE COMMISSION: COMMISSIONER ROBERT E. LEE ABSENT. COMMISSIONER JOHNSON CONCURRING IN THE RESULT.

1. The Commission has before it for consideration the above-captioned application of Lanford Telecasting Co., Inc., licensee of television station KALB-TV, channel 5, Alexandria, Louisiana, requesting a construction permit to change the output channel of television broadcast translator station K11KK, Natchitoches, Louisiana, from channel 11 to channel 10, and a petition to deny, filed January 12, 1973, by Teleservice Corporation of America, owner and operator of cable television systems in Natchitoches and Winnfield, Louisiana, and various pleadings filed in connection therewith.[1] The Commission granted Lanford's application (BPTTV-4166) for a construction permit for a new 10-watt translator to operate on channel 11 in Natchitoches on March 26, 1971, and the time within which the station was to be constructed was extended three times.

2. Petitioner claims standing as a "party in interest" within the meaning of section 309(d) of the Communications Act of 1934, as amended, on the grounds that operation of the translator station as proposed would cause electrical interference to reception by the Winnfield cable television system of the incoming signals off the air from station KTVE-TV, channel 10, El Dorado, Arkansas.[2] We find that petitioner has standing. *National Broadcasting Co. (KOA)* v. *Federal Communications Commission*, 76 U.S. App. D.C. 238, 132 F 2d 545, affirmed 319 U.S. 239, 63 S. Ct. 1035.

3. The transmitter of station KTVE-TV is approximately 83 miles from Winnfield and 104 miles from Natchitoches. Winnfield lies due south of El Dorado and bears 75 degrees (ENE) from Natchi-

[1] The applicant filed an Opposition on March 9, 1973, and petitioner filed a reply thereto on March 26, 1973. On April 13, 1973, the applicant filed a Motion for Leave to File Rejoinder and a Rejoinder, on the basis that matters were raised in the petitioner's reply which had not been raised in the petition to deny. We grant the leave prayed.

[2] Petitioner also claims that interference would be caused to reception of the signals of station KTVE-TV by the Natchitoches cable system, but that system, although an expansion program is underway, does not at this time carry station KTVE-TV. The Commission has not been informed that circumstances have changed. Consequently, such injury is speculative and we confine our consideration to electrical interference to the Winnfield system.

toches; Natchitoches lies 195 degrees (SSE) from El Dorado. The transmitting antenna of the translator would be oriented 328 degrees true (NNW) and the effective radiated power in that direction would be about 67 watts; in the direction in Winnfield, 64 degrees true, the effective radiated power would be insignificant (less than one watt, according to the applicant). The applicant states that Winnfield is well beyond KTVE–TV's predicted Grade B contour. It is agreed by the parties that reception of KTVE–TV's signals by the cable system at Winnfield is impaired by interference from co-channel television station KLFY–TV, Lafayette, Louisiana, which is 111 miles from the Winnfield receiving site. Petitioner states that this interference has been minimized with proper antennas and good engineering. The applicant contends that the interfering signals from KLFY–TV are much stronger than the translator signals and, should interference occur by operation of the translator, the cable system should have little difficulty in eliminating the problem by similar means. Petitioner did not dispute these allegations. The applicant suggests that petitioner could eliminate the problem by means of microwave relays, but petitioner rejected that alternative as too costly. Petitioner, in turn, suggests that there are alternatives available to the applicant: a change of site to the east side of Natchitoches, use of channel 2 instead of channel 10, or a UHF translator. The applicant states that the location of the translator site is irrelevant because KTVE–TV is not carried on the Natchitoches system and, because line-of-sight would be necessary in any event, there would be no diminution of the problem. Channel 2 is not a feasible alternative because it is adjacent to channel 3 from KTBS–TV, Shreveport, Louisiana, which is carried on both cable systems and channel 11 cannot be used as authorized because of adjacency to KSLA–TV, channel 12, Shreveport.[3] Although the applicant did not comment on use of a UHF translator, we may assume that the same objections obtain to use of a UHF translator by the applicant as to the use of microwave relay by the petitioner.

4. Neither of the parties to this proceeding has advised the Commission in any pleading that petitioner is now carrying KTVE–TV on its Natchitoches cable system. Consequently, we are concerned only with the possibility of interference to the Winnfield system. The design of the translator transmitting antenna and its orientation, as discussed in the preceding paragraph, makes it apparent that the likelihood of any significant interference to the Winnfield system is remote. The signal intensity in the direction of Winnfield will be so weak that, as pointed out in the applicant's engineering statement, it could easily be eliminated in the same manner that the cable system has succeeded in reducing interference from the much stronger signals of KLFY–TV to acceptable levels. The proposed change in frequency was prompted, at least in part, by petitioner's own objections to use of channel 11 and the applicant has made a convincing showing that interference is less likely

[3] On May 5, 1971, one and one-half months after grant of the Lanford application, petitioner herein wrote to the Commission complaining that interference would be caused by operation of the translator on channel 11 to reception by the Natchitoches cable system of the signals of KSLA–TV, channel 12, Shreveport. Based on assurances by Lanford that such interference, if it did occur, would be eliminated, petitioner herein forebore further efforts to forestall construction and operation of the translator.

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to occur by operation on channel 10 than on channel 11. We think, therefore, that grant of the application is warranted.

5. We find that petitioner has raised no substantial or material questions of fact and that the applicant is qualified to construct and operate as proposed. We further find that grant of the application would serve the public interest, convenience and necessity.

Accordingly, IT IS ORDERED, That the petition to deny filed herein by Teleservice Corporation of America, IS DENIED, and the above-captioned application of Lanford Telecasting Co., Inc., IS GRANTED, in accordance with specifications to be issued.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Acting Secretary.*

F.C.C. 73-905

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of ROGER D. OLSEN, GRAND RAPIDS, MINN. For Construction Permit for New FM Translator Station	File No. BPFT-96

MEMORANDUM OPINION AND ORDER

(Adopted September 6, 1973; Released September 14, 1973)

BY THE COMMISSION: COMMISSIONER ROBERT E. LEE ABSENT. COMMISSIONER WILEY CONCURRING IN THE RESULT.

1. The Commission has before it for consideration the above-captioned application of Roger D. Olsen, seeking a construction permit for a new 10-watt FM radio broadcast translator station to serve Grand Rapids, Minnesota, by rebroadcasting station KEZZ(FM), channel 232 (94.3 MHz), Aitkin, Minnesota, on output channel 269 (101.7 MHz). On June 6, 1973, Itasca Broadcasting Corporation, permittee of FM station KOZY-FM, channel 244 (96.7 MHz), Grand Rapids, Minnesota, and licensee of standard radio station KOZY, Grand Rapids, filed a petition to deny the application.[1]

2. Petitioner claims standing on the grounds that operation of the translator station as proposed would divert listenership from petitioner's stations and thereby inflict economic injury on the petitioner. We find that petitioner has standing. *Federal Communications Commission* v. *Sanders Brothers Radio Station*, 309 U.S. 470, 60 S. Ct. 693, 9 RR 2008.

3. Grand Rapids is a community of 7,200 persons and is located approximately 50 miles from Aitkin, Minnesota, the city of license of the proposed primary station, and well beyond station KEZZ(FM)'s predicted 1 mV/m contour. The city is divided by the Mississippi River and because the translator station would serve portions of Grand Rapids which are east of the river, petitioner contends that the application is inconsistent with section 74.1235(a) of the Commission's rules, which limits translators serving areas east of the Mississippi River to transmitter output power of one watt. Petitioner further claims that the translator will disrupt the Commission's allocations scheme, that a need for the translator has not been shown, and that the proposal would not result in satisfactory service to the entire community. We will consider these contentions *seriatim*.

4. In designating the Mississippi River as the dividing line between areas where we will permit only one watt and areas where

[1] The applicant filed a response to the petition on July 17, 1973, and petitioner filed a reply on July 20, 1973.

we will permit 10 watts, we were aware that the line represented by the river, as with any line, is arbitrary, but it was settled upon because, generally, that part of the country east of the river is characterized by greater frequency congestion and therefore requires a limitation on permissible power. Where, as here, the river divides the principal community, the higher power should be allowed unless there is a problem with frequency congestion. It is clear that, in Grand Rapids, there would be no problem in permitting 10 watts and we hold, therefore, that the proposal in this respect is consistent with the rules. Authorization of a translator beyond its primary station's predicted 1 mV/m contour to an applicant who is neither the licensee of the primary station nor supported financially by the licensee of the primary station is consistent with the rules and the Commission's policies. Petitioner does not contend that the application violates the rules in this regard. With respect to an alleged disruption of the Commission's FM allocations scheme, petitioner has provided no support for such an assertion. As to the alleged failure of the applicant to demonstrate a need for the translator, the Commission has held repeatedly that an applicant is not required to show a need for a translator unless an objector first makes a *prima facie* showing of lack of need; e.g., *Translator TV, Inc.*, 30 FCC 2d 435, 22 RR 2d 212. Not only has petitioner failed to make a showing here, but its pleading would seem to make a strong case for the need for the translator, it being alleged that standard radio station KOZY is the only radio station in Itasca County, in which Grand Rapids is located.

5. The contention that the translator would not provide satisfactory service to Grand Rapids is equally without factual support. Petitioner contends that, based on its analysis of the engineering data, satisfactory coverage of the community "according to the requirements as given in the rules" will not be achieved. Petitioner has cited no rule which the application violates with respect to required coverage and, indeed, there is none. Our experience indicates that if a translator station fails to provide the service visualized by the applicant, the applicant will not tolerate the situation but will make an effort to improve the service being provided. We would favor such an approach. *Marsh Media, Ltd.*, 18 FCC 2d 164, 16 RR 2d 529.

6. Petitioner has consistently resisted any attempt by others to obtain an authorization for a translator in Grand Rapids; its resistance seems to be based on a desire to preclude competition. The Commission's rules permit a party who is not the licensee of a primary station or who is not connected with such a licensee to own and operate a translator beyond the primary station's predicted 1 mV/m contour. If, as petitioner contends, the rules should be changed, a rule making proceeding is the proper forum. The Commission and the courts have repeatedly stated that it is not the Commission's purpose nor function to protect a licensee against competition, for Congress intended that there be competition in the business of broadcasting. *Federal Communications Commission* v. *Sanders Brothers Radio Station, supra.* Petitioner's station is not yet in operation; it has made no effort to demonstrate that competition would cause injury to the public interest. In short, the Commission is entitled to

demand much more than mere unsupported conclusions that competition would result in economic injury to an unbuilt station. *Folkways Broadcasting Company, Inc.* v. *Federal Communications Commission*, 126 U.S. App. D.C. 123, 375 F. 2d 299, 8 RR 2d 2089.

7. We find that petitioner has raised no substantial or material questions of fact. We further find that the applicant is qualified to construct, own and operate the proposed new translator station and that a grant of the application would serve the public interest, convenience and necessity.

Accordingly, IT IS ORDERED, That the petition to deny filed herein by Itasca Broadcasting Corporation, IS DENIED, and the above-captioned application of Roger D. Olsen, IS GRANTED, in accordance with specifications to be issued.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Acting Secretary.*

F.C.C. 73-884

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMENDMENTS OF PARTS 2, 81, 83, AND 91—TO PROVIDE FREQUENCIES, STANDARDS, AND PROCEDURES FOR ON-BOARD COMMUNICATIONS IN THE INDUSTRIAL AND MARITIME MOBILE SERVICES	Docket No. 19665

FIRST REPORT AND ORDER

(Adopted August 29, 1973; Released September 6, 1973)

BY THE COMMISSION: COMMISSIONERS JOHNSON AND REID ABSENT.

1. A Notice of Proposed Rule Making in the above-captioned matter was released on January 9, 1973, and was published in the Federal Register on January 15, 1973 (38 F.R. 1513). The date for filing comments and reply comments have passed.

2. Comments were filed by: American Institute of Merchant Shipping (AIMS); Central Committee on Communication Facilities of the American Petroleum Institute (API); Land Mobile Section of the Communications and Industrial Electronics Division of the Electronic Industries Association (EIA); National Association of Business and Educational Radio, Inc. (NABER); and Santa Fe International Corporation (Santa Fe).

3. AIMS agrees in substance with the proposed rule making. API agrees in substance with the philosophy of rules proposed. EIA, in general, concurs with the proposed rule making. NABER states their awareness of the pressing needs for on-board communications. Consideration of the comments has not affected the following proposed rule sections and they are, therefore, adopted as proposed.

Part 2: Section 2.1.

Part 81: Section 81.3(b)(1).

Part 83: Section 83.3(b). Section 83.3(n), (o) & (p). Section 83.7(k). Section 83.22(h). Section 83.134(h)(1) and (h)(2). Section 83.811(b)(1) and (b)(2). Section 83.815(a)(1) and (b)(1). Section 83.825(a) through (d).

With regard to proposed Section 83.823: paragraphs (a) and (c) are now contained within Section 83.162; paragraph (b), in major part, is now contained within Section 83.160(a)(1) and (a)(2), and the remainder is added to Section 83.164 as paragraph (c); and paragraph (d) is added to Section 83.164 as paragraph (d).

4. Questions were raised and/or alternative proposals were filed by each of the commentors concerning various of the proposed rules and these are treated in the paragraphs set forth hereinafter.

5. With regard to proposed Section 83.7(j) NABER expressed concern regarding possible misinterpretation of the main lobe of a directional antenna. The proposed definition was taken from No. 99 [1] of the International Radio Regulations. The last sentence of No. 99 was omitted from proposed Section 83.7(j) because in this proceeding the scatter mode of propagation is not planned or authorized. With regard to directional antennas used by On-Board Stations, we expect these antennas will be of the collinear array type which radiate equally in the horizontal plane, the gain being obtained by compression of energy in the vertical plane. It is not expected that there will be much use of the "yagi" type antenna because of the poor coverage to the back of such arrays. As concerns the directional properties of the antenna, it seems probable that the antenna used by an On-Board Station (on-board repeater) would be selected by the applicant from a catalog of antennas to meet a particular requirement. The antenna selected will have published directional characteristics which will be readily available to all interested persons, including the Commission. As concerns special antennas, the high cost of developing an antenna to provide a substantially different coverage pattern, taken in conjunction with the limited market for such antennas, will, as a practical matter, reduce to a minimum the number of these special antennas for which published characteristics are not readily available. We expect Section 83.7(j) to be of more interest to antenna manufacturers than it is to the user. Over the years there has been wide variation in the basis used by various mobile service antenna manufacturers to express antenna gain. The intent of Section 83.7(j) was, therefore, to stabilize this basis for antennas used by On-Board Stations in the Maritime Services. By relating gain to a half-wave dipole, instead of to an isotropic antenna, we are providing a practical reference which is readily determinable by all antenna manufacturers. Further, the (dB) gain or loss in a particular direction is directly applicable in computing effective radiated power, which will be of benefit to the user. Lastly, in the application form we are requiring that the applicant for an On-Board Station state the gain, relative to a half-wave dipole, of the antenna employed in those cases where an on-board repeater is installed. Further, should there be a need to do so, the Commission can require that an applicant provide substantiation of the value of antenna gain set forth in the application. In view of the foregoing, the Commission is adopting Section 83.7(j) without change, as set forth in the attached Appendix.

6. NABER commented that any new uses of the Business Radio Service frequencies should be coordinated so that accurate records could be maintained to guide the orderly assignment of business applicants in areas of heavy maritime use. Considering the transient nature of ships and the fact that on-board equipment can be expected to remain with the ship on which it is licensed, the Commission believes that frequency coordination would serve no real purpose. Accordingly, no requirement for frequency coordination in the maritime service has been adopted.

[1] Radio Regulations, International Telecommunication Union, Geneva 1968.

7. NABER pointed out that the proposed changes for Parts 81 and 83 do not specifically authorize or prohibit use of on-board station frequencies by aircraft and requested that the rules be changed to prohibit such use. In the Business Radio Service, use of the frequencies by aircraft in flight is specifically prohibited by frequency limitation 13 in Section 91.554(b). So that there will be no question about use of the frequencies by aircraft in connection with on-board stations, we have amended Section 83.811(a) to show that the frequencies are not available to aircraft.

8. With regard to proposed Section 83.36(d), AIMS and API strongly express the view that FCC Forms 501 and 502 be used in applying for an On-Board Station in order that all transmitters of a ship station may be included under a single instrument of authorization. In examining Forms 501 and 502 it is quickly apparent that these forms do not solicit information needed by the Commission for the technical and administrative regulation of On-Board Stations. FCC Forms 501 and 502 cannot be readily modified to include this needed information. There are substantial differences between ship stations, an integral part of the maritime mobile service, and On-Board Stations. Fundamental to these differences is the practical matter that ship stations communicate with other ship stations and/or with coast stations. In the course of doing this, they operate on frequencies which are allocated to the maritime mobile service. Radionavigation aboard ship is carried out in bands allocated to, or available to, maritime radionavigation. In contrast, On-Board Stations are intended to provide internal communications within the confines of a single vessel. They will operate on frequencies which are allocated to the Land Mobile Service. Use will be on an equal and cooperative shared basis with the Business Radio Service. Under the ship station license, since the United States conforms to the requirements of the International Radio Regulations relative to ship station license requirements, the licensee of a ship station is required to provide properly licensed operator personnel. Thus, if the On-Board Station is licensed as a part of the ship station, personnel operating that station must hold operator licenses as required by the International Radio Regulations. In contrast thereto, RTCM SC62, which considered this matter in depth, recommended that personnel operating On-Board Stations not be required to hold operator licenses. RTCM's motivation was that there are numerous crew members who are not United States citizens and are not, therefore, eligible to hold an FCC operator license. The absence of such eligibility in no way detracts from the capability of these personnel to fully and adequately perform their jobs aboard ship, including the operation of components of the On-Board Station. Further, the technical nature of the On-Board Station (see the Appendix attached hereto), permits a relaxation of the operator requirements where not required by treaty. In summary, we are persuaded that the recommendations of RTCM should take precedence and that the benefits or convenience of a single instrument of authorization, if any, are substantially less than the benefits accruing from a relaxation of the operator license requirements. Accordingly, as set forth in the attached Appendix, Section 83.36(b) is being adopted to prescribe that FCC Form 503 shall be used in application for an On-Board Station.

9. EIA, in regard to proposed Section 83.131(f), expresses the view that the frequency tolerance applicable to on-board repeater stations should be 5 parts per million, instead of the proposed tolerance of 2.5 parts per million. In support, EIA comments that the tolerance for on-board repeaters should not be different from that applicable to the Business Radio Service. We accept this view and, as set forth in the attached Appendix, have amended Section 83.131(f) to show a frequency tolerance for on-board repeaters of 5 parts per million.

10. Our proposal to modify both the Petroleum and Business Radio Service rules in Part 91 to duplicate, in part, the marine availability of the frequencies, was supported by AIM and API. We have reconsidered this proposal, particularly in the light of the rule amendments to permit communication between the marine on-board stations and stations in the Business Radio Service. We have adopted rule changes solely for the Business Radio Service. Duplication in the Petroleum Radio Service is not necessary because applicants for use of the frequencies in the Petroleum Radio Service would also be eligible in the Business Radio Service.

11. AIMS and API, in regard to proposed Section 83.132(a)(2)(iv), point to the need for use of an emission other than F3 for certain intraship non-voice functions. In particular, AIMS and API set forth the need, by use of a non-voice emission, to anchor towed barges under adverse environmental conditions, when those conditions require that the tug and tow be separated. AIMS and API state that under these conditions the safety of life, property and environment are directly affected. AIMS and API call attention to the current provisions of the rules applicable to the Business Radio Service (Section 91.554(b)(43)) which permits the use of emissions A1, A2, F1 and F2 and recommends that proposed Section 83.132(a)(2)(iv) be amended to add the use of F2 emission. We are persuaded that the addition of emission F2 for the purpose described would be in the public interest.

12. The matter of dropping anchors by transmitted radio frequency signals was discussed in some detail in RTCM SC–62. During those discussions, it was recognized that unless appropriate steps were taken in the coding, that is, in the actuating information of the transmitted signal, it would be possible for one vessel to drop anchors aboard one or more other vessels so equipped, which are within propagation range of the radio frequency signals. The same is true, of course, under similar conditions with the raising of anchors. It is readily apparent that the lowering or raising of anchors aboard other than the intended vessel would constitute a safety hazard, which could result in loss of life and/or large amounts of property damage. Such a hazard can be removed where the coding of the transmitted signal is such that only the anchor of the intended vessel is actuated.

13. It is apparent that adequate safety regulations could appear in the regulations of either the United States Coast Guard (USCG), or those of the FCC. We have, therefore, effected coordination with the Office of Chief Counsel, USCG, and it has been agreed that appropriate safety regulations will be included in the FCC Rules and Regulations.

14. It is our view that the coding of the transmitted signal must be unambiguous and distinctive to the vessel concerned. Further, the

safety considerations involved preclude an approach where we merely authorize the use of emission F2 and leave to the person operating the vessel the determination of the details of the coding to be used. Unless industry-wide coordination is effected in the assignment of codes, it is probable that two or more vessels will employ the same coding signal. Since it appears unreasonable to expect intra-industry coordination of this nature and scope, we intend to prescribe, in Part 83, the coding and technical standards applicable to the system and these are set forth in a Further Notice of Proposed Rule Making in this proceeding.

15. AIMS and API, in regard to proposed Section 83.134(h)(3) and the limitation of type accepted transmitter to a power of 4.0 watts, indicate that such limitation appears to preclude the use of a technique which may prove to be very desirable on many vessels. The technique to which AIMS and API refer is that of use of a "lossy" coaxial antenna system to carry the radio frequency energy above and below deck. Such a system is expected to require the use of a higher transmitter output power. We can concur that such a system may have a high future potential, however, the establishment of appropriate technical standards for the use of such a system goes substantially beyond the scope of this proceeding. In view thereof, we are not in this proceeding making provision for the use of "lossy" coaxial antenna systems, and have adopted, for the purpose of type acceptance, the power limitation of 4.0 watts carrier power, as set forth in the attached Appendix.

16. AIMS and API, in regard to proposed Section 83.813, inquire, in effect, as to the need for or purpose served by this section. As set forth in paragraph 6 above, AIMS and API recommended that the on-board station be a part of the ship station and that FCC Forms 501 and 502 be employed in applying for an on-board station. Were Forms 501 and 502 used, Section 83.813 would be redundant or repetitious. However, since the on-board station will not be a part of the ship station, it is necessary that the Commission determine that the applicant is in control of the vessel on which the on-board station is to be installed and operated. This direct relationship between Commission and licensee is deemed essential due to the relaxation of the log keeping and operator licensing requirements appearing in Sections 83.821 and 83.823. Accordingly, with some editorial change to conform to existing rules, we are adopting Section 83.813 essentially as proposed, as set forth in the attached Appendix.

17. AIMS, API and SANTE FE commented with regard to Section 83.815. AIMS and API commented in regard to Section 83.815 (a)(2) and 83.815(b)(2). SANTA FE directed their comments to Section 83.815(b)(2). As concerns (a)(2), AIMS and API express the view that the phrase "large oil transfer operations" is too restrictive and should be changed to "petroleum or petroleum products." As concerns (b)(2), AIMS and API indicate that (b)(2) is or appears to be in conflict with (a)(2), which conflict could be removed by adding (as underlined) words at the end of (b)(2), to read:

"(b)(2) For the loading or unloading of cargo *except as provided in § 83.815(a)(2).*"

SANTA FE suggests that (b)(2) should be amended by adding (as underlined) either of two phrases, to read:

"(b)(2) For the loading or unloading of cargo *by cargo and other vessels which are primarily engaged in the carriage of cargo for hire*";

or

"(b)(2) For the loading or unloading of cargo *while a vessel is within the inland waters of the United States.*"

18. With regard to AIMS and API suggestion for change of Section 83.815(a)(2), the phrase "large oil transfer operations" was taken from regulations adopted by the USCG and published in the Federal Register, dated December 21, 1972 (see 37 F.R. 28250) on the subject of pollution prevention. In those regulations the USCG included a Part 154, entitled "Large Oil Transfer Facilities," which requires, in Section 154.560, that means be provided for "two-way communication between the person in charge of the transfer operation on board the vessel and the person in charge of the facility transfer operation." While the USCG requirement can be fulfilled by the use of facilities other than radio, the view was taken in RTCM SC–62 that it would be necessary in many cases to use radio. To that end, SC–62 urged that in drafting its regulations, the Commission permit the use of the on-board station to fulfill this USCG requirement. The alternative to this approach would be for the vessel and shore facilities to operate on other frequencies which could require installation of additional radio equipment. Such alternative approach, as compared to the use of the on-board station, would increase, rather than decrease action required by the Commission to provide frequencies and licenses. The view taken by RTCM SC–62 was, therefore, considered to be the more practical approach since it would reduce the over-all cost of radio facilities aboard concerned vessels. These facts notwithstanding, the Commission's concurrence to use of the on-board station for communication with shore facilities derives from the USCG pollution prevention requirement that a communication capability be provided in the case of "large oil transfer facilities".

19. Returning now to AIMS and API suggestion that the word "oil" is too restrictive and should be changed to "Petroleum and petroleum products": While we are inclined to agree we suspect, in turn, that the proposed phrase is similarly too restrictive, since it does not cover other types of matter which should not be spilled in the water in the process of loading or unloading vessels. While we are not familiar with the background which led the USCG to select the title for Part 154, we can assume that there is an adequate basis for the title chosen. Further, should it develop that the USCG finds it appropriate to expand the scope of Part 154 by a change in title, we will at that time accept requests for a change in Part 83, Section 83.815(a)(2). In view of the foregoing, since pollution prevention is the responsibility of the USCG, we will await action by that agency to amend the title of Part 154 of Title 33 of the CFR. Section 83.815(a)(2) is, therefore, adopted without change, as set forth in the attached Appendix.

20. As set forth in Paragraph 14 above, AIMS, API and SANTA FE suggested changes to Section 83.815(b)(2). AIMS and API suggestion seeks to remove an apparent conflict with Section 83.815(a)(2). This suggested change would remove any existing ambiguity and

it is, therefore, adopted as set forth in the attached Appendix. Further changes to § 83.815 are discussed in Paragraphs 23 and 24, below.

21. SANTA FE suggested two alternatives to the proposed wording of Section 83.815(b)(2). The first suggested change would, stated in context, reduce the instances where on-board stations should not be used for the loading or unloading of cargo. The effect of this first suggestion, if adopted, would be to expand the use of the on-board station for the loading or unloading of cargo, or specifically for the loading or unloading of cargo by vessels which are not engaged in the carriage of cargo for hire or do so on a secondary basis. Our objection to the use of on-board stations for the loading or unloading of cargo is because of the congestion caused to the limited number of channels available, the concentration of vessels in port and harbor areas, and the increased operational need for the channels by vessels when in these areas. Whether a vessel does or does not handle cargo for hire is not a controlling factor, since the congestion is the result of the communications generated by the loading or unloading activity. It is our view that congestion could be caused as easily by vessels not engaged in the carriage of cargo for hire as by vessels which are so engaged. We are not, therefore, adopting the first alternative change to Section 83.815(b)(2) as suggested by SANTA FE.

22. SANTA FE's second alternative suggestion for change to Section 83.815(b)(2) would prohibit the use of the on-board station for the loading or unloading of cargo when within inland waters of the United States, but would permit that station to be used for the loading or unloading of cargo when not within the inland waters. In their comments, SANTA FE provides no clarifying explanation or background in support of this suggested change. While their comments include the statement: "Subsidiary companies of SANTA FE International Corporation which operate offshore floating drilling, construction and pipelaying vessels primarily in foreign locations, but also in U.S. waters and/or offshore the U.S. coastline . . . ," this statement cannot be construed as either enlightening or of providing definition with respect to this suggested change. In the absence of any basis from which to assess the merits or to determine the degree of need, and recognizing that the area which is not within the inland waters of the United States includes the inland waters of all other countries, we are not adopting the second alternative change to Section 83.815(b)(2) suggested by SANTA FE.

23. AIMS and API, with regard to Section 83.817, commented that the limitation applicable to antenna height is too restrictive and, second, that distinction is not made between an antenna used by a hand-carried mobile unit and one used by an on-board repeater. With regard to the first comment, in the case where the wheel house is on one of the lower decks, it is correct that it would be impractical to mount an antenna as proposed. With regard to the second comment, the antenna height proposed was intended to be applicable to the antenna used with an on-board repeater. We are, therefore, amending Section 83.817, as set forth in the attached Appendix, to include the changes suggested by AIMS and API.

24. AIMS and API, in regard to Section 83.819, comment that the procedure proposed in this section would be burdensome, since defec-

tive equipment is usually not repaired aboard ship. In the typical example which they cite, after the vessel docks any defective equipment is unplugged and replaced with equipment which performs properly. The service personnel then return the defective equipment to a service shop on shore for repair at a later time. In due course, the service shop completes repair of that equipment and it becomes available for use as a replacement unit aboard other vessels. The problem, as pointed out by AIMS and API, is that the repair of the defective equipment is usually effected well after the vessel has departed. Thus, it would be necessary to locate that vessel, which by that time will be at sea or in some other port, in order to enter in the station records the details of the repair work carried out on the defective equipment. With a large number of vessels, each of which carry multiple transceiver units, the record updating would present a major problem. We concur that under these conditions a sizable problem would be generated, without providing any particular benefit. The intent was that the station records should set forth the equipment used at that station and accurately reflect any changes thereto. In the case where repair of equipment is effected on the vessel, we are of the view that it is proper that an appropriate entry be made in the station record covering the nature of repair effected. At the same time, where a piece of equipment is defective and is replaced, the entry in the station record would cover only the replacement and not service work carried out on the defective unit at some other time and place. Accordingly, we have amended Section 83.819, as set forth in the attached Appendix, to bring it into accord with the above discussion.

25. AIMS and API, in regard to Section 83.821(b)(2), comment that this section makes no provision for the licensing of hand-carried transceiver units on the dock, or for operator licensing during the time those units are used to handle docking communications. The scope of change required to cover these two points goes well beyond the provisions of Section 83.821(b)(2). As outlined, the dock personnel would use the hand-carried unit for communication with numerous vessels which tie-up to that or nearby docks. Were the situation such that the hand-carried unit was used solely for communication with one vessel, that unit could be a part of the on-board station of that vessel. As a practical matter, however, this unit will be used for communication with all vessels using that dock or nearby docks. Under marine licensing procedures there is no way the hand-carried unit on the dock can be licensed as one unit of the on-board station aboard many vessels. Licensing in the Business Radio Service appears to be a means of providing for this mode of communication. On-board facilities could be utilized if proposed Section 83.815 is changed to permit intercommunication. On this basis, no change is required to Section 83.821(b)(2). As concerns the operator licensing of personnel operating the shore-side hand-carried unit(s), such personnel must meet the requirements set forth in the rules applicable to the Business Radio Service.

26. A parallel situation exists with regard to communication between the on-board station and the shore-based radio facility which is provided to meet USCG requirements (see paragraph 18, above), during large oil transfer operations. The shore-based facility could be

authorized in the Business Radio Service. In order that these two facilities may intercommunicate, it will be necessary to remove the apparent conflict which exists between on the one hand, 83.815(a)(2) and on the other hand, 83.815(a) and (b)(2). Accordingly, in order to effect the changes discussed in this and in Paragraph 17 above, we have amended Section 83.815(a), (b)(1) and have added a new Paragraph (c), as set forth in the attached Appendix.

27. Turning now to the Business Radio Service and the shore-based facility, our rule modifications of Part 91 have been broadened in regard to the nature of the communications that would be permitted on the frequencies. The frequencies have been made available for communications from shore to vessel, relative to cargo handling. As discussed above, the scope of messages that can be handled by the on-board stations will be limited by § 83.815 and the on-board station license. The 25-foot restriction between control point and the center of radiation of the antenna, as set forth in Section 91.554(b)(13), is replaced by the 10-foot above the vessel's highest working deck antenna height, see § 83.817, and effective radiated power of 2 watts limitations which are contained in the marine rules. The same frequency arrangement for simplex and mobile relay operation as established in the marine rules has been made available to the Business Radio Service. Business Radio Service licensees will be able to maintain mobile transmitter/receiver units at docks and other areas where vessels handle cargo, which can be taken aboard a vessel and used for communications where equipment is not available to operate in the marine service. It will also be possible for mobile units licensed in the Business Radio Service and operated on the dock or shore location to communicate with on-board stations in the marine services.

28. AIMS and API, in regard to Section 83.821(b)(3), comment that this section is inconsistent with Section 83.815(a)(2) and that 83.821(b)(3) does not provide for the case where it is necessary to make large transfer of petroleum or petroleum products from one vessel to another. In support, AIMS and API state that the use of on-board communication facilities under these conditions would substantially contribute to the prevention of spillage, in the same manner that such facilities contribute in the transfer from ship to dock. In examining USCG regulation, Title 33, Part 154, Section 154.560, we find that that section concerns only the case of large oil transfer operations from a vessel to an on-shore or off-shore facility, neither of which is defined to include another vessel. While we have provided in this proceeding for the use of the on-board station as a means of complying, where necessary, with the mandatory provisions of Section 154.560 of the USCG regulations, we are not persuaded that it is appropriate or desirable to expand the use of the on-board facilities beyond the scope of the present USCG regulations. Should it develop at some future date that the USCG chooses to amend their regulations, we will at that time reconsider the matter of use of the on-board station for vessel to vessel communications. Accordingly, the suggestion of AIMS and API that the on-board station be used for large oil transfer operations from vessel to vessel is not adopted. We are, however, removing the inconsistency pointed out by AIMS and API

between Sections 83.821(b)(3) and 83.815(a)(2), as set forth in the attached Appendix.

29. EIA, in a general vein, stresses that equipments type accepted for use under Part 91 rules should be permitted to be used on the on-board frequencies under Part 83, even though that equipment is not type accepted under Part 83 rules. EIA points out that at the time these equipments were type accepted under Part 91, there were no 450–470 MHz allocations under Part 83. EIA expresses the view that it would be an unjust and unbearable burden, both procedurally and economically, upon the equipment suppliers to now require an additional filing for type acceptance under Part 83 rules. EIA emphasizes that the additional use of these frequencies for on-board communications is a channel sharing (Part 91 with Part 83) proceeding and that equipments type accepted under Part 91 Rules should be usable also under Part 83. EIA requests that the acceptability of such arrangement be included in the instant proceeding.

30. In considering EIA's supporting comments, we note there are equipments type accepted under Part 91 which do not conform to the limitations applicable to on-board communications. A rubber-stamp procedure such as suggested by EIA would, therefore, authorize types of equipment for use at on-board stations which do not conform to the technical limitations imposed on those stations. In itself, this is an unacceptable arrangement. By progression, when viewed in the light of the eventual consequences, i.e., if such an arrangement is acceptable between Parts 91 and 83 it should be similarly acceptable between other Parts of the rules, it would destroy the effectiveness of the Commission's type acceptance program. This does not mean that some, or more, of the equipment type accepted under Part 91 do not meet the technical requirements for on-board stations under Part 83. In fact, some or more of the Part 91 equipment do meet the requirements applicable to on-board stations.

31. The introduction of on-board stations under Part 83 opens a sales area for equipment suppliers which previously did not exist. On the positive side, this sales area does not impose on the equipment supplier any requirement to develop a new line of equipment, or to change the technical characteristics of an existing line of equipment. To apply for type acceptance under Part 83 for Part 91 equipment, which meets the technical limitations applicable to on-board stations, the equipment supplier does not necessarily have to repeat all tests, since he can use the test data filed or on file under Part 91. This would appear to be a bonus situation for the equipment supplier. For these reasons, we are not persuaded that this is either an unjust or unbearable burden on the equipment supplier. Accordingly, we will continue the procedure as applied in the past, that is, equipment will be type accepted for the Part of the Rules under which it is to be operated. EIA's request is, therefore, denied.

32. In view of the foregoing, IT IS ORDERED, That pursuant to the authority contained in Sections 4(i) and 303 (a), (b), (c), (d), (e), (f) and (r) of the Communications Act of 1934, as amended,

Parts 2, 81, 83 and 91 of the Commission's rules, ARE AMENDED, effective October 12, 1973, as set forth in the attached Appendix.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Acting Secretary.*

APPENDIX

Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

A. Part 2, Frequency Allocations and Radio Treaty Matters; General Rules and Regulations, is amended as follows:

1. In Section 2.1, the definition of Maritime Mobile Service is amended to add a Note, to read as follows:

§ 2.1 Definitions.

* * * * * * *

Maritime mobile service. A mobile service between coast stations and ship stations, or between ship stations, in which survival craft stations may also participate.

Note: Including use of on-board stations.

* * * * * * *

B. Part 81, Stations on Land in the Maritime Services and Alaska-Public Fixed Stations, is amended as follows:

1. In Section 81.3, paragraph (b) (1) is amended to read as follows:

§ 81.3 Maritime mobile service.

* * * * * * *

(b) Maritime and land mobile service.

(1) Maritime Mobile Service. A mobile service between coast stations and ship stations, or between ship stations, in which survival craft stations may also participate. (Includes use of on-board stations. Aircraft stations, when transmitting on frequencies allocated to the maritime mobile service, may communicate in this service with ship stations and coast stations.)

* * * * * * *

C. Part 83, Stations on Shipboard in the Maritime Services, is amended as follows:

1. In Section 83.3, Paragraph (b) is amended, and new Paragraphs (n), (o) and (p) are added, to read as follows:

§ 83.3 Martime mobile service.

* * * * * * *

(b) *Maritime mobile service.* A mobile service between coast stations and ship stations, or between ship stations, in which survival craft stations may also participate. (Includes use of on-board stations. Aircraft stations, when transmitting on frequencies allocated to the martime mobile service, may communicate in this service with ship stations and coast stations.)

* * * * * * *

(n) *On-board station.* A station in the maritime mobile service on board ship, including a combination of two or more on-board mobiles and an on-board repeater, intended to be used primarily for intraship operational communications on board ship and in the immediate vicinity of the ship, as related to ship security and protection, while the ship is in motion or moored.

(o) *On-board mobile.* A hand-carried mobile transmitter and receiver operated as part of an on-board station.

(p) *On-board repeater.* A transmitter and receiver operated as part of an on-board station, intended for the reception and automatic retransmission of signals between on-board mobiles.

2. In Section 83.7, the existing paragraphs are lettered (a) through (i) and new paragraphs (j) and (k) are added, to read as follows:

§ 83.7 Technical.

* * * * * * *

(j) *Antenna power gain.* The ratio of the power required at the input of a half-wave dipole to the power supplied to the input of the given antenna to produce, in a given direction, the same field at the same distance. When not specified otherwise, the figure expressing the gain of an antenna refers to the gain in the direction of the radiation main lobe.

(k) *Effective radiated power (ERP).* The product of the antenna input power and the antenna power gain. This product should be expressed in watts and is referred to a half-wave dipole. (If specified in a particular direction, effective radiated power is based on the antenna power gain in that direction only.)

3. In Section 83.22, add a new Paragraph (h), to read as follows:

§ 83.22 Administrative Classification of Stations.

* * * * * * *

(h) On-board stations.

4. In Section 83.36, Paragraph (b) is amended to read as follows:

§ 83.36 Application forms for station authorizations.

* * * * * * *

(b) FCC Form 503 shall be used: (1) For filing formal application for new or modified station license in the maritime radiolocation service; and (2) In applying for an on-board station license.

5. In Section 83.131, a new paragraph (f) is added to read as follows:

§ 83.131 Authorized frequency tolerance.

* * * * * * *

(f) The frequency tolerance authorized for on-board stations is 5.0 parts in 10^6.

6. In Section 83.132, a new subdivision (iv) is added to Paragraph (a)(2), to read as follows:

§ 83.132 Authorized classes of emission.

(a) * * *

(2) * * *

(iv) *Frequency band*

For the frequency band 450–470 MHz . . . F3

* * * * * * *

7. In Section 83.134, a new Paragraph (h) is added to read as follows:

§ 83.134 Transmitter power.

* * * * * * *

(h) The power employed by on-board stations when operating shall not exceed 2.0 watts effective radiated power. These transmitters will be type accepted on the basis of a carrier power of not more than 4.0 watts, with the transmitter terminated in a dummy load of matching impedance (not connected to an antenna). The licensee shall apply appropriate measures to assure that the effective radiated power does not exceed 2.0 watts.

8. In Section 83.137, Paragraph (h) is amended to read as follows:

§ 83.137 Modulation requirements.

* * * * * * *

(h) Each transmitter[2] operated in the bands 156–162 and 450–470 MHz shall be equipped with an audio low-pass filter installed between the modulation limiter and the modulated (radio frequency) stage which, at audio frequencies between 3 kHz and 20 kHz, shall have an attenuation greater than the attenuation at 1 kHz by at least 60 $\log_{10}$ (f/3) decibels, where "f" is the audio frequency in kHz. At audio frequencies above 20 kHz the attenuation shall be at least 50 decibels greater than the attenuation at 1 kHz.

9. In Section 83.164, new Paragraphs (c) and (d) are added to read as follows:

§ 83.164 Waivers of operator requirement.

* * * * * * *

(c) No radio operator license is required for the operation of an on-board station: PROVIDED, That the limitations set forth in Section 83.160 (a)(1) and (a)(2) shall apply.

(d) No person is required to be in attendance at the repeater of an on-board station when transmitting during the normal rendition of service.

10. A new Subpart Z, entitled Use of On-Board Communications, is added to read as follows:

SUBPART Z—USE OF ON-BOARD COMMUNICATIONS

§ 83.811 Authorized frequencies.

(a) The assigned frequencies set forth in Paragraph (b) of this section may be used aboard vessels employing radiotelephony for on-board communications when authorized by station license. The frequencies are available on a shared and cooperative basis with stations operating in the Business Radio Service. These frequencies are not available for use by aircraft.

(b) Assigned frequencies.

(1) For two frequency simplex (duplex), paired as follows:

Channel	On-board repeater (MHz)	On-board mobile (MHz)
1	457.525	467.750
2	457.550	467.775
3	457.575	467.800
4	457.600	467.825

(2) For single frequency simplex: 457.525, 457.550, 457.575 and 457.600 MHz.

§ 83.813 Supplemental eligibility requirements.

(a) Subject to the basic eligibility requirements set forth in Section 83.23, authorization for on-board stations may be granted to the following:

(1) State or local government subdivisions; or any agency of the Federal Government which is subject to the provisions of Section 301 of the Communications Act;

(2) The owner or operator having control of the vessel aboard which the on-board station is to be installed and operated; or

(3) A parent corporation or its subsidiary if either corporation is the owner or operator of the vessel aboard which the on-board station is to be installed and operated.

(b) Each application shall be accompanied by a statement containing facts sufficient to establish the applicant's eligibility for license under the criteria set forth in Paragraph (a) of this section.

§ 83.815 Points of Communication.

(a) Subject to the conditions and limitations imposed by the terms of the particular station license or by applicable provisions of this part with respect to the use of particular radio-channels, on-board stations on board ships in the maritime mobile service are authorized to communicate with other mobile units of the same station, except as provided in Paragraph (c) of this section:

(1) Aboard the same vessel for operational communications;

(2) From ship to dock for large oil transfer operations to prevent spillage; and

(3) In the immediate vicinity of the same vessel for operational communications relating to docking or life boat and emergency drills.

(b) An on-board station may not be used:

(1) For communication with any other station, except as provided in Paragraph (c) of this section; or

(2) For the loading or unloading of cargo, except as provided in subparagraph (a)(2) of this section.

(c) An on-board station may communicate with a station in the Business Radio Service operating on the same frequency, provided that the communications pertain to the activities set forth in subparagraphs (a)(2) and (a)(3) of this section.

§ 83.817 Antenna height.

The center of the radiating system of the on-board repeater antenna shall be located no higher than 10 feet above the vessel's highest working deck.

§ 83.819 Station records.

(a) Each on-board station shall be provided with records showing:

(1) The name of ship and identification of the on-board station;

(2) The number and type of repeater and mobile units used aboard the vessel under the on-board station authorization;

(3) The date and type of equipment which is added to or removed from the on-board station;

(4) The date and time of any failure of the equipment to operate in accordance with these rules;

(5) The date of repair, servicing, or replacement of each repeater or mobile equipment used under the on-board station authorization. Where repair is effected aboard ship, the record shall also include the nature of the repair; and

(6) The name, category of operator license and license number of the person effecting repair, servicing, or replacement of equipment employed under the on-board station authorization.

(b) The record specified in Paragraph (a) of this section shall be maintained by the licensee for the duration of the station authorization, and such records shall be retained for a period of one year thereafter.

(c) The station records shall be made available to authorized Commission personnel upon request.

§ 83.821 Station logs.

(a) Stations authorized for use aboard vessels for on-board communications are not required to maintain a log.

§ 83.823 Station operation.

(a) The licensee of an on-board station shall assure;

(1) That the on-board station is operated in accordance with the Commission's rules applicable to that station;

(2) That personnel operating the mobile units are limited to designated members of the crew of the vessel aboard which the on-board station is authorized;

(3) That use of the on-board station is limited to communications between crew members aboard the same vessel; and shall prohibit use of the on-board station for communications with another vessel, except as authorized in Section 83.815 of this chapter;

(4) That unnecessary transmissions are not made, as a means of avoiding harmful interference to other vessels within communication range which are employing the same frequencies.

(b) Each on-board repeater shall be furnished with automatic means to deactivate the transmitter in the event the carrier remains on for a period in excess of 3 minutes.

§ 83.825 Identification of Station.

(a) On-board stations shall identify transmissions by announcement in the English language as set forth in Paragraphs (b), (c) and (d) of this section.

(b) Identification of station shall include the name of the vessel, followed by a number or name designating the respective mobile unit(s), for example, the identification and call would be: "S.S. United States Mobile One this is Mobile Two."

(c) Identification shall be transmitted when:

(1) The vessel is in a port or harbor, in inland waters, within 20 miles of any coastline or in a busy shipping lane; or

(2) The communications are likely to be received aboard another vessel.

(d) Identification, when required, shall be transmitted at the beginning and upon completion of a series of communications *Provided, however:* That station identification shall be transmitted at intervals not exceeding 15 minutes whenever transmissions, or a series of transmissions, is sustained for a period exceeding 15 minutes.

D. Part 91, Industrial Radio Services is amended as follows:

1. In Section 91.554, Paragraph (a) is amended by adding new limitation designators (49) and (50) to certain frequencies and paragraph (b) is amended to include the new frequency limitations (49) and (50) as follows:

§ 91.554. Frequencies available.

(a) * * *

Business Radio Service Frequency Table

Frequency or band	Class of station(s)	General reference	Limitations
MHz			
* * *	* * *	* * *	* * *
457.525	Mobile	Low power general use	13, 33, 43, 49, 50.
457.550	do	do	Do.
457.575	do	do	Do.
457.600	do	do	Do.
* * *	* * *	* * *	* * *
467.750	Mobile	Low power general use	13, 33, 44, 49, 50.
467.775	do	do	Do.
467.800	do	do	Do.
467.825	do	do	Do.
* * *	* * *	* * *	* * *

(b) * * *

(49) This frequency is used on a shared and cooperative basis with on-board stations in the maritime mobile service.

(50) Frequencies subject to this assignment limitation are herein considered collectively for use for communications concerned with cargo handling from a dock, or cargo handling facility, to a vessel alongside. Any number of the frequencies may be authorized to one licensee for the purpose. Mobile relay stations may be temporarily installed at or in the vicinity of a dock or cargo handling facility and used when a vessel is alongside the dock or cargo handling facility.

On-vessel mobile relay (MHz)	*Associated mobile (MHz)*
457.525	467.750
457.550	467.775
457.575	467.800
457.600	467.825

For single frequency simplex: 457.525, 457.550, 457.575 and 457.600 MHz.

The effective radiated power (ERP) on any frequency shall not exceed 2 watts. For an on-vessel mobile relay station the separation between the transmitter control point and the radiating portion of the antenna shall not be over 10 feet above the vessel's highest working deck.

* * * * * * * *

F.C.C. 73-885

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMENDMENTS OF PARTS 2, 81, 83 AND 91—TO PROVIDE FREQUENCIES, STANDARDS AND PROCEDURES FOR ON-BOARD COMMUNICATIONS IN THE INDUSTRIAL AND MARITIME MOBILE SERVICES	Docket No. 19665

FURTHER NOTICE OF PROPOSED RULE MAKING

(Adopted August 29, 1973; Released September 6, 1973)

BY THE COMMISSION: COMMISSIONERS JOHNSON AND REID ABSENT.

1. Further Notice of Proposed Rule Making in the above-captioned matter is hereby given.

2. A Notice of Proposed Rule Making in the above-captioned matter was released on January 9, 1973, and was published in the Federal Register on January 15, 1973 (38 F.R. 1513). The First Report and Order was released on August 31, 1973.

3. In the comments filed by the American Institute of American Shipping (AIMS) and Central Committee on Communication Facilities of the American Petroleum Institute (API) in the Notice of Proposed Rule Making, the Commission was urged to also authorize the use of emission F2 for certain intra-ship non-voice functions. In particular, AIMS and API set forth the need, by use of the non-voice (F-2) emission, to anchor towed barges under adverse environmental conditions, when those conditions require that the tug and tow be separated. AIMS and API state that under these conditions the safety of life, property and environment are directly affected. This proposal was discussed in some detail in Paragraphs 8 through 11 of the First Report and Order (FCC 73-884).

4. As discussed in the First Report and Order, the coded information for the F2 transmitted signal must be unambiguous and distinctive in order that the actuating instructions are limited to the vessel concerned. To assure that the coded information is distinctive and unambiguous, the Commission intends to include in Part 83 rules to prescribe the coding and technical standards applicable to this signalling system. The system being proposed provides for the generation and keying of two audio tones with 15 characters of binary coded alpha-numeric information, taken from a standardized alphabet, which is introduced into the modulator section of the frequency modulated (FM) radiotelephone transmitter, transmitted at a rate of 300 bits per second (bps). Further brief discussion is set forth in the following paragraphs.

5. With regard to coding of the signal, we propose that the following information be transmitted in the sequence shown:

(a) The control character "SYN", transmitted twice, to establish system synchronization;

(b) Six characters, conforming to the documentation number of the vessel transmitting the command (200000–299999 & 500000–599999);

(c) Three letters selected and changed at will by the vessel operator, as a means of providing company operational or secrecy control (AAA through ZZZ);

(d) Two letters, setting forth the actuation instructions [1] (AA through ZZ); and

(e) The control character "EM", transmitted twice, to indicate termination of transmission.

6. The alphabet proposed is that referred to as USASCII [2] (United States of America Standard Code for Information Interchange). This alphabet, with minor differences, is also designated by the International Telegraph and Telephone Consultative Committee (CCITT) as Alphabet No. 5. Also, it has been adopted by the International Standards Organization (IOS). Further, within the last two years a number of maritime service electronic systems have been considered by the Radio Technical Commission for Marine Services (RTCM) for use with this alphabet. Thus, to the extent it is practicable to do so, we believe it desirable to minimize the number of alphabets which are employed in the maritime services.

7. The attached Appendix also sets forth standards with regard to:

(a) bit sequence;

(b) character structure;

(c) character parity; and

(d) sense of character parity.

These proposed standards are taken from United States of America Standards Institute publications USAS X3.15–1966 and USAS X3.25–1968.

8. We propose also a standard signalling rate of 300 bps. While this rate appears to be relatively slow, it is our understanding that modulator/demodulator (MODEM) units for operation at 300 bps are readily available as "off the shelf" items at a nominal cost. The avoidance of premium quality MODEMs, such as may be required at the higher signalling rates, should facilitate the early development of practicable hardware. At 300 bps, the time required to transmit the 120 bits of information described in Paragraph 5, above, is 0.4 seconds.

9. Since the basic system is frequency modulated radiotelephony, we are proposing that two-tone frequency-shift keying (F2) be employed. As to the tones, we propose 1070 Hz, corresponding to "0" (low), and 1270 Hz, corresponding to "1" (high), be employed. Information is not available to indicate that the system employed will require or should provide for confirmation of command from the tow back to the tug. If provision for such confirming feature is required, and we look to the comments in this proceeding for information in that

[1] It is suggested that these letters be taken from the U.S. Naval Hydrographic Office publication "International Code of Signals." As an example, the letters "QV" indicate: "I am anchoring in position indicated." This would appear to be close enough to fulfill an instruction: "drop anchor."

[2] See page 6 and 7, USAS Institute publication USAS X3 4–1068.

regard, standards for such transmission would also be included in Part 83.

10. The proposed amendments to the rules, as set forth in this Notice and Appendix, are issued pursuant to authority contained in Sections 4(i) and 303(a), (b), (c), (d), (e), (f) and (r) of the Communications Act of 1934, as amended.

11. Pursuant to applicable procedures set forth in Section 1.415 of the Commission's rules, interested persons may file comments on or before October 12, 1973 and reply comments on or before October 23, 1973. All relevant and timely comments and reply comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision in this proceeding, the Commission may take into account other relevant information before it, in addition to the specific comments invited by this notice.

12. In accordance with the provisions of Section 1.419 of the Commission's rules, an original and 14 copies of all statements, briefs, or comments filed shall be furnished the Commission. Responses will be available for public inspection during regular business hours in the Commission's Public Reference Room at its headquarters in Washington, D.C.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Acting Secretary.*

APPENDIX

Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

A. Part 83, Stations on Shipboard in the Maritime Services, is amended as follows:

1. A new Section 83.835 is added to read as follows:

§ 83.835 Remote control for maneuvering or navigation.

(a) An on-board communication channel may be used for remote control of maneuvering or navigational control systems aboard the same vessel or another vessel. The remote control system employed shall conform to the standards set forth in this section.

(1) The emission employed shall be F2. The provisions in this part applicable to the use of F3 emission are also applicable to the use of F2 emission. The transmitter must be adjusted and operated so that the instantaneous frequency deviation does not exceed the maximum value allowed for F3 emission.

(2) The binary information shall be applied to the carrier as modulation by frequency-shift keying (FSK) of the standard tones 1070 and 1270 Hz. Expressed in terms of positive logic, "0" (low) shall correspond to 1070 Hz and "1" (high) shall correspond to 1270 Hz.

(3) The alphabet employed shall be the United States Standard Code for Information Interchange (USASCII), set forth in the United States of America Standards Institute publication USAS X3.4–1968.

(4) The bit sequence shall be least significant bit first to most significant bit (bit 1 through bit 7) in ascending (consecutive) order.

(5) The character structure shall consist of 8 bits (seven bits plus one character parity bit) having equal time intervals.

(6) The character parity bit shall be transmitted and shall follow the most significant bit, bit 7, of the character to which it applies.

(7) The sense of character parity shall be odd over the eight bits, i.e., an odd number of "1."

(8) The signalling rate shall be 300 bits per second.

F.C.C. 73-920

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Personal Attack Ruling Concerning
STATION WGCB, RED LION, PA.
and
STATION WXUR, MEDIA, PA.

ORDER

(Adopted September 6, 1973; Released September 11, 1973)

BY THE COMMISSION:

1. The Commission has before it an Application for Review, filed on July 9, 1973 by Stations WGCB, Red Lion, Pennsylvania and WXUR, Media, Pennsylvania (hereafter Petitioners),[1] of the Broadcast Bureau's ruling of June 8, 1973, —— FCC 2d —— (1973), and the July 19, 1973 reply to the Application filed by the United Church of Christ.

2. We have examined all the pleadings herein and believe that the Bureau's ruling was correct. However, we believe some comments should be made concerning various allegations set forth in the Application for Review. Petitioners state that the Broadcast Bureau's ruling is unconstitutional because "It is a direct intrusion into the journalistic discretion and judgment of licensees and constitutes outright censorship in commanding licensees to give reply time and specifying the content of the introduction to such a reply." However, the Supreme Court in *Red Lion Broadcasting Co.* v. *U.S.*, 395 U.S. 367 (1969), specifically upheld the constitutionality of the fairness doctrine and the Commission's personal attack rule, including the concept that when a person's character, integrity, honesty or like character is attacked during a discussion of a controversial issue of public importance the licensee has an obligation within seven days of the broadcast to offer the person attacked a reasonable opportunity to reply. Further, the Bureau's ruling did not specify the content of the introduction to the reply by the United Church of Christ. The Bureau did rule that prefacing or concluding a reply to a personal attack with a repeat of or justification for the original attack would not appear, on its face, to constitute a reasonable opportunity to reply under Section 73.123. Cf. *Mario Procaccino* (*WCBS-TV*), 20 FCC 2d 451 (1970). We think this ruling was proper and not an impermissible specification.

3. Petitioners further contend that the Broadcast Bureau's ruling was "a discriminatory and oppressive application of the fairness doctrine and personal attack rules" due in part to the fact that "no person . . . complained to the Commission of any personal attack by

[1] WXUR ceased operation on July 6, 1973. See Docket No. 17141.

reason of the broadcast which is the subject of the ruling . . ." The fact that the failure of WGCB and WXUR to fulfill their obligations under Section 73.123 in connection with the January 27, 1972 "Life Line" program was first brought to the Commission's attention by their attorney does not relieve those stations from the obligation already incurred by them, and it does not estop the Commission from taking action in the case. We have noted on a previous occasion that we welcome licensees' questions as to their obligations in complying with the personal attack rule in doubtful situations. See *In the Matter of Amendment of Part 73 of the Rules*, 8 FCC 2d 721, 722 (1967). But, as stated in the Bureau's ruling, a three month delay in seeking Commission advice obviously precludes any finding of a reasonable attempt at compliance with the rule. We also note that the United Church of Christ did send a letter of complaint about the January 27 "Life Line" program on October 31, 1972.

4. Petitioners also argue that "WCGB and WXUR were solely singled out, deliberately and obviously for prejudicial purposes for an adverse ruling even though information before the Chief of Complaints and Compliance indicated plainly that there were many other Stations which carried the same broadcast . . ." and failed to comply with Section 73.123. The Commission notes that WGCB and WXUR were the only two stations that asked for a ruling and provided sufficient information upon which a ruling could be completed. If other stations carried the program and have failed to comply with Section 73.123, the Commission will act on those cases when a complaint is received and/or sufficient information is submitted informing us of the details of the alleged violations.

5. Accordingly, pursuant to Section 1.115(i) of the Commission's Rules and Regulations, the Application for Review IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Acting Secretary.*

F.C.C. 73-917

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
REQUEST OF STATION WISH-TV, INDIANAPOLIS, IND., FOR MODIFICATION OF PRIME TIME HOURS FOR THE PURPOSE OF THE PRIME TIME ACCESS RULE

MEMORANDUM OPINION AND ORDER

(Adopted September 6, 1973; Released September 14, 1973)

BY THE COMMISSION: COMMISSIONER ROBERT E. LEE ABSENT.

1. The Commission here considers a letter request of August 14, 1973, on behalf of Station WISH-TV, Indianapolis, Indiana, asking in effect that the prime time hours for the station, for the purposes of the prime time access rule (Section 73.658(k)), be changed early in September to those specified in the rule, 7-11 p.m. local time (Indianapolis is located in the Eastern time zone). Indianapolis, unlike most of the United States including New York City, remains on standard (non-advanced) time throughout the year, so that, during the daylight-saving time portion of the year, late April to late October, network programs arrive there an hour earlier, in terms of local clock time, than they do in the Eastern time zone generally. In recognition of this, in 1972 and 1973 the Commission acted at the request of two or more of the network-affiliated stations in this market, and redesignated the prime hours there under the rule as 6 to 10 p.m. local time during the daylight-saving portion of the year, or through October 27, 1973. See, for 1973, FCC 73-441, 40 FCC 2d 741 (April 25, 1973).[1]

2. In effect, WISH-TV asks that the hours of prime time be "unredesignated" for it, effective with the start of the new CBS fall season about September 10, rather than waiting till October 28, when daylight-saving time ends in the rest of the United States. Starting September 10, it intends to tape all CBS evening programs and rebroadcast them an hour after they are received, or from 8 to 11 p.m. Indianapolis time, except from 7:30 to 10:30 on Sundays. It argues that this is preferable so that viewers can make all of their adjustments at one time—adjusting to the new fall season as well as making the hour time adjustment which otherwise would occur October 27-28. It is claimed that the latter process—an hour's shift when viewers are still in the process of adjusting to the new season—tends to be confusing and disruptive for viewers. It is stated that WISH-TV has not taken this approach before because last year it did not have the capa-

[1] The same approach was permitted with respect to Detroit and Grand Rapids, Michigan, but in 1973 Michigan observed daylight-saving time.

bility to tape delay a full evening's schedule, and did not anticipate having it when it requested the re-designation of hours earlier this year. Copies of the WISH–TV request were served on the other two network-affiliated stations; there has been no response.[2]

3. The proposed tape delay of CBS material does not, of course, in itself require a waiver; since the networks limit their programming to three prime-time hours each evening, a full schedule thereof could be presented under any designation of hours. It appears, particularly from a supplemental letter of August 21 on behalf of the station, that WISH–TV will do this irrespective of its request for early readjustments of hours. The latter is sought for a narrower reason: so that WISH–TV may carry on Sunday, from the start of the fall season, an "off-network" program from 6 to 7 p.m. local time. As long as prime hours are 6 to 10 p.m., it cannot do this under the rule, since this would mean 3½ hours of network and off-network material on these evenings (one hour off-network followed by CBS from 7:30 to 10). Thus, it would have to substitute another non-network program for the first six Sundays of the year unless its request is granted.

DISCUSSION AND CONCLUSIONS

4. On consideration of the foregoing matters, we are of the view that the requested early readjustment of prime hours for WISH–TV should be granted, provided the station in fact puts into effect the general arrangement discussed above, taping and re-broadcasting regular CBS evening programs an hour later than the time they are received in Indianapolis. The readjustment has the obvious merit of returning at an early date to the provisions of the rule applicable generally, under which the prime time hours in the Eastern time zone are 7 to 11 p.m., or, for example, a period starting an hour after 6 p.m. which for many persons is the dinner hour. With the delay arrangement—which apparently WISH–TV is going to put into effect anyhow—the readjustment will also mean the same hours generally applicable in terms of network scheduling; i.e., an hour of "cleared" time followed by network programs, except on Sundays, when one-half hour of "cleared" time will follow the network material. Therefore, and also bearing in mind the fact that the adjustment will be only for 7 weeks (or 6 Sundays), it appears that there is no substantial reason the licensee's request should not be granted.

5. We are aware that there are possible counter-arguments. For example, assuming WISH–TV is going to delay its network material anyhow, if the hours of prime time remain at 6 to 10 p.m., this would result in the station's presenting only 2 hours of network programming during the prime-time period on weekdays, and 2½ hours on Sundays, meaning that 2 hours of prime time on weekdays, and 1½ hours on Sundays, would be available to non-network programming (although some of that could be "off-network" programming). It could be argued that this would better serve the rule's objectives. There is also the possibility that the "trade-off" involved, under which 7–7:30 and

[2] We are not told what the station's plans are for programing the early evening period on days other than Sunday, either with or without the adjustment in hours which is requested. In November 1972 it was one of the 23 top 50 market stations which carried network news at 7 following an hour of local news, and it "stripped" a game show at 7:30 Monday through Friday.

10:30–11 become the "access period" on Sundays instead of 6–6:30 and 9:30–10, might result in a lesser, rather than a greater, potential audience for access period material.[3] However, bearing in mind that the rule envisages in general one hour of "cleared" prime time, which would exist under any designation, that the additional "cleared" time beyond that might be used for off-network rather than new material, and that the whole situation will exist for only about 7 weeks in any event, these do not appear to be substantial considerations to indicate that the request should be denied. The matter of comparative value of the time periods involved either way, mentioned above and in footnote 3, is one within the area of licensee judgment and responsibility (particularly since it is going to have to "sell" the non-network period itself). On the whole, therefore, this appears to be a case where the Commission is not warranted in interfering with the licensee's scheduling judgments made within the general framework of the rule.

6. However, we believe it appropriate to condition the readjustment action on WISH–TV actually putting into effect the general arrangement under which it will delay CBS prime-time programs an hour. It has been argued that the purposes of the prime time access rule might be furthered by having part of the cleared access period occur later in the evening than the first hour of prime time; for example, in providing access to a different audience for different types of programming. But there are also countervailing considerations, and we are not at this time prepared to endorse, by Commission action, an individual arrangement which results in all or most of the cleared access half-hours being at the end of the evening, following network programs. With this *caveat*, the request of WISH–TV is granted, and the Commission's staff may give similar authority to the two other Indianapolis network-affiliated stations if they request it.

7. In view of the foregoing, IT IS ORDERED, That for Station WISH–TV, Indianapolis, Indiana, at such time between September 10 and October 28, 1973, as the station puts into effect a general practice of taping and re-broadcasting CBS prime-time programs with an hour delay, the hours of prime time specified in Section 73.658(k) for stations located in the Eastern time zone, 7–11 p.m. local time, WILL APPLY.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Acting Secretary.*

[3] Insofar as the change would result in 7:00 rather than 6:00 p.m. being an "access" half hour, it would probably mean a greater potential audience. However, analysis of ARB audience-survey data for this market in May and November 1972 indicates that on Sundays, which are primarily involved, this gain might be more than offset by a loss in having the later access half-hour at 10:30 rather than 9:30.

F.C.C. 73-949

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
REQUESTS FOR WAIVER OF THE OFF-NETWORK RESTRICTION OF THE PRIME TIME ACCESS RULE, SECTION 73.658(k)(3) OF THE COMMISSION'S RULES, FOR THE NATIONAL GEOGRAPHIC PROGRAM FOR 1973-74

MEMORANDUM OPINION AND ORDER

(Adopted September 11, 1973; Released September 14, 1973)

BY THE COMMISSION: COMMISSIONER ROBERT E. LEE ABSENT; COMMISSIONERS JOHNSON AND H. REX LEE DISSENTING.

1. The Commission here considers requests for waiver of the off-network restriction of the prime time access rule (Section 73.658(k)(3) of the Commission's Rules) for the *National Geographic* program for the 1973-74 broadcast year, filed during July and August 1973 by the following: Hubbard Broadcasting, Inc., licensee of Station KSTP-TV, St. Paul, Minnesota; Boston Broadcasters, Inc., licensee of Station WCVB-TV, Boston, Massachusetts; Capital Cities Communications, Inc., licensee of Station WKBW-TV, Buffalo, New York; D. H. Overmyer Telecasting Company, Inc., licensee of Station WDHO-TV, Toledo, Ohio; Carolina Broadcasting Company, licensee of Station WSOC-TV, Charlotte, North Carolina, and WBRE-TV, Inc., licensee of Station WBRE-TV, Wilkes-Barre, Pennsylvania. The prime time access rule prohibits the presentation of network programming for one hour each night of prime time, and the off-network restriction prohibits programming, which has previously appeared on one of the networks, from being used during this one-hour "access period". The *National Geographic* programs under consideration ran on the Columbia Broadcasting System at the rate of about four programs per year from 1965 until 1971, at which time this material was placed in syndication.

2. Three of the requests dealt with here, for KSTP-TV, WCVB-TV, and WKBW-TV, are from licensees who have previously received limited waivers by staff action pursuant to delegated authority, for the presentation of the *National Geographic* series during the access period for 1972-73. The bases for these requests are essentially that because we have previously granted waivers for this program [1] and to these particular licensees, we should again do so. They point out that the reasons for granting the waivers in each of these instances remain the same, i.e., there is only minimal network interest in and control of

[1] *National Geographic*, 37 FCC 2d 933, FCC 72-956, released October 31, 1972. *Various Requests for Waiver*, FCC 73707, Mimeo #97657, released July 2, 1973.

these programs, there has been no recent network exposure of most of the material, and this series is of a distinctive and meritorious character. KSTP–TV argues further that it intends to use only 30 of the 60 minutes of the access period and only for one day each week to present the *National Geographic* programs, and, therefore, there is only a minimal incursion into the access period. Station WDHO–TV seeks a waiver for this program for the first time, and cites our previous *National Geographic* waiver decisions mentioned above as the bases for waiver. WDHO–TV also intends to use only 30 minutes of the access period each week to present this program series, and makes the same *de minimis* argument as KSTP–TV. WSOC–TV intends to use the program four times during the period from September through December 1973, and eight times from January to September 1974. Each of these uses will be for one hour, from 10–11 p.m. which has been given back to the station by the network. Because of their limited number, WSOC–TV also makes the *de minimis* argument as well as the other arguments mentioned above. WBRE–TV makes similar arguments.

DISCUSSION AND CONCLUSIONS

3. Upon careful consideration of the above matters, we are of the opinion that the requested waivers should be granted. As argued by the petitioners, we have previously granted waivers for this program, including some in a decision reached in June of this year, both as to some stations which had previously received waivers for 1972–73, and some which were requesting waiver for the *National Geographic* programs for the first time. As has been argued by the petitioners here, the reasons for our earlier decisions have not changed: There is only a minimum of network interest or control in these programs (earlier acquisition of the right to network exhibition), they are of a distinctive character and their past network exposure was limited and largely not recent.

4. One additional matter requires our attention: In the June 1973 decision on *Various Waivers*, which included *National Geographic* waivers, we said that further waivers of this type would not be acted upon until at least after the Oral Argument in the prime time access rule proceeding, Docket No. 19622. That argument was held on July 30 and 31, and it now appears that the decision in that proceeding will not be forthcoming before late September, which is approximately the time when these licensees seek to have their waiver requests become effective. We do not believe it to be in the public interest to withhold action here until the overall decision is reached, and thus leave these licensees with their programming plans for the coming season uncertain. Moreover, it appears that any fundamental changes in the rule, if adopted, will likely not be effective before the 1974–75 year, and it is necessary to reach some arrangements for this coming year. We emphasize again that this is *not* a general waiver for the *National Geographic* series, and other stations must file specific requests if they wish waiver. These may well not be acted on until the overall Docket 19622 decision.

5. In view of the foregoing, IT IS ORDERED, That the requests for waiver of the off-network restriction of the prime time access rule

(Section 73.658(k)(3) of the Commission's Rules) by the licensees of KSTP–TV, St. Paul, Minnesota, WCVB–TV, Boston, Massachusetts, WKBW–TV, Buffalo, New York, WDHO–TV, Toledo, Ohio, WSOC–TV, Charlotte, North Carolina, and WBRE–TV, Wilkes-Barre, Pennsylvania, in order that they may carry the *National Geographic* series of programs during prime time without its counting toward the permissible three hours of network and off-network material, ARE GRANTED, through September 30, 1974.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Acting Secretary.*

42 F.C.C. 2d

F.C.C. 73-895

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of
PSA BROADCASTING, INC.
For Change in Call Sign of FM Station KPSA, Los Angeles, Calif., to KEZM; and for Change in Call Sign of FM Station KPSE, San Diego, Calif., to KEZL

MEMORANDUM OPINION AND ORDER

(Adopted September 6, 1973; Released September 12, 1973)

BY THE COMMISSION: COMMISSIONER ROBERT E. LEE ASBENT. COMMISSIONER REID CONCURRING IN THE RESULT.

1. The Commission has for consideration: (a) the above-captioned applications; (b) objections thereto dated June 6, 1973, filed by KEZY Radio, Inc. (KEZY), licensee of stations KEZY and KEZY-FM, Anaheim, California; (c) actions by the Chief, Broadcast Bureau, of June 22 and June 26, 1973, denying KEZY's objections and assigning the requested call letters to the respective stations; (d) KEZY's Motion to Stay and Application for Review of said staff actions; and (e) all related pleadings and correspondence.

2. The Motion for Stay and Application for Review are considered concurrently since both pleadings raise substantially the same issues, in addition to which the stay request fails to establish a *prima facie* case of success on the merits and does not show irreparable injury to KEZY or the public resulting from our joint disposition of the pleadings.

3. On June 22, 1973, the Chief, Broadcast Bureau denied KEZY's objection to PSA's request for change in the call sign of FM station KPSE, San Diego, to KEZL. In that denial it was noted that Anaheim and San Diego are approximately 70 miles apart and are distinct communities in separate trading areas. Moreover, the 1 mV/m contours of the respective FM stations are separated by approximately 35 miles, and the 0.5 mV/m contour of station KEZY(AM) only slightly overlaps the 1 mV/m contour of the San Diego FM station. This overlap occurs more than 50 miles from Anaheim. Finally, it was observed that the possibility of confusion would be further lessened by the identification of one station as "Anaheim" and the other station as "San Diego."

4. On June 26, 1973, the Chief, Broadcast Bureau, denied KEZY's objection to the request for change in the call letters of FM station KPSA, Los Angeles, to KEZM. It was first noted that the difference between the final letters ("Y" versus "M") provides a sufficient phonetic and rhythmic basis for distinguishing these stations. Moreover, with respect to alleged confusion between the two FM stations, it was determined that KEZY's mandatory use of the "FM" suffix would pro-

vide the public with an additional means of distinguishing between KEZM and KEZY–FM. In this connection, the fact that station KEZY (AM) provides an AM service while station KEZM provides an FM service further distinguishes the call letters KEZM and KEZY. Finally, it was again observed that any remaining public confusion should be obviated by the identification of KEZY AM/FM as "Anaheim" and the other station as "Los Angeles."

5. In its application for review, KEZY asserts that the staff actions, in both instances, were in conflict with Commission policy and precedent, and, in addition, premised on erroneous findings of fact. Specifically, with respect to KEZY–FM, KEZY states that the 34 dBu (0.05 mV/m) contour of the San Diego station extends northward to Huntington Beach, well within its service area. In support of its position, KEZY cites *Radio WLTO, Inc.*,[1] in which we recently set aside the issuance of new call letters to a Miami station due to the fact that Miami was receiving a primary service from a distant station with similar call letters. The 34 dBu signal is not a primary service. In fact, the 34 dBu signal is, in most circumstances, receivable only in rural areas with an outside antenna. Therefore, apart from the apparent lack of phonetic similarity (KEZ*Y* versus KEZ*L*), we find the 70-mile separation sufficient to eliminate any likelihood of listener confusion.

6. With respect to the assignment of the call sign KEZM, KEZY alleges that a "saturation of the Los Angeles/Anaheim/Orange Count[y] service area with a barrage of confusingly similar call signs" is the "critical issue" of this case. In this regard, KEZY refers to KEZY and KEZY–FM Anaheim, KWIZ and KWIZ–FM, Santa Ana, and the recently assigned KEZM, Los Angeles, KEZY includes station KEZL, San Diego, as part of this "melange." We cannot agree. As stated earlier, there is not sufficient phonetic or rhythmic similarity between KEZY and KEZY–FM, Anaheim, and KEZM, Los Angeles, to cause public confusion. Similarly, the signal delivered by KEZL cannot be properly characterized as a contributing factor to public confusion in this area. Furthermore, stations KWIZ and KWIZ–FM, Santa Ana, containing only the required initial letter of "K" and the letter "Z" do not create phonetic or rhythmic confusion in the Los Angeles area. These call letters are assigned to stations licensed to serve different communities, thereby, in each instance, providing the public with an additional means of distinguishing stations.

7. Finally, KEZY refers to several promotional phrases used by stations KEZY and KEZY–FM emphasizing the letters "E" and "Z". Promotional announcements and materials used by broadcast stations are influenced by competitive factors, which, by their very nature, are subject to frequent change. For this reason, among others, the manner in which call letters are promoted is not taken into account by the Commission in resolving call letter disputes.

8. Accordingly, IT IS ORDERED, That KEZY Radio, Inc.'s, Motion for Stay and Application for Review ARE DENIED, and the staff actions of June 22 and June 26, 1973, ARE AFFIRMED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Acting Secretary.*

[1] *Radio WLTO, Inc.*, 39 FCC 2d 806 (1973).

F.C.C. 73-960

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of the Applications of RCA GLOBAL COMMUNICATIONS, INC. AND RCA ALASKA COMMUNICATIONS, INC. For Authority To Lease Satellite Transponder Channels from Telesat Canada; To Construct Earth Stations in the Vicinity of New York, Los Angeles, San Francisco, and Lena Point and Anchorage, Alaska; and To Participate in the Ownership and Operation of the Authorized Satellite Earth Station in Talkeetna, Alaska (Bartlett)	Files Nos. P-C-8592, 50-DSE-P-71, 54-DSE-P-71, 55-DSE-P-71, 72-DSE-P-71, 73-DSE-P-71, 13-DSE-P-73, 22-DSE-P-73, 78-CSG-AP-70
WESTERN UNION INTERNATIONAL, INC. For Authority To Participate in the Ownership and Operation of the Authorized Satellite Earth Station Talkeetna, Alaska (Bartlett)	File No. 79-CSG-AP-70

MEMORANDUM OPINION, ORDER AND AUTHORIZATION

(Adopted September 12, 1973; Released September 12, 1973)

BY THE COMMISSION: COMMISSIONER ROBERT E. LEE ABSENT; COMMISSIONERS JOHNSON AND REID CONCURRING IN THE RESULT

1. On March 12, 1973 RCA Global Communications, Inc. (RCA Globcom) and RSA Alaska Communications, Inc. (RCA Alascom), collectively referred to as the RCA applicants, filed an application for authority to acquire, construct and operate an interim communications satellite system, utilizing leased transponders, in the Canadian Telesat satellites in conjunction with five domestic satellite earth stations to carry traffic among locations in Alaska and the contiguous United States. Western Union Telegraph Company (Western Union) and the Network Project have filed petitions to deny the applications, and Western Union International, Inc. (WUI) and American Satellite Corporation (ASC) have filed comments. Various responsive and reply pleadings have also been filed. Subsequently, RCA filed applications for two additional earth stations.

Interim Proposal of the RCA Applicants

2. The RCA applicants have pending before the Commission applications for construction permits for four satellites (File Nos. 13 through 16-DSS-P-71). Pending activation of that space segment, the RCA applicants propose to lease satellite transponder capacity from

Telesat Canada. Under the terms of a service agreement between the RCA applicants and Telesat, dated April 5, 1973, the RCA applicants are committed, as a minimum, to lease one transponder channel (about 600 one-way voice circuits) for full period use at a cost of $2.5 million for one year and a minimum of 300 hours of occasional use (television) at the rate of $800 per hour. The term of the lease is for one year, commencing on September 1, 1973, with options to renew for two additional six months periods. The RCA applicants are presently negotiating with Telesat to extend the service date, along with their obligation to commence payments to Telesat, in view of the present unlikelihood that they can complete construction of the earth stations in time to commence service by September 1. The RCA applicants state that the traffic to be carried on the Telesat space segment could be readily transferred to the proposed RCA space segment, or an AT&T space segment, once such facilities are authorized and become operational.

3. The RCA applicants have filed and amended applications for earth stations to be used with this interim system as shown in the listing given in Attachment 1. These stations will be equipped to operate in a single-channel-per-carrier mode. All transmissions will be in the 6 GHz band and all reception in the 4GHz band. There are no unresolved frequency conflicts except for the Valley Forge station.

4. The RCA applicants propose initially to establish jointly owned earth stations near New York, Los Angeles and San Francisco. RCA Alascom seeks a construction permit for an earth station at Lena Point (near Juneau, Alaska),[1] and authority to establish or acquire an earth station near Anchorage. Specifically with respect to Anchorage, RCA Alascom requests the Commission to grant its outstanding application for a 100% ownership interest in the Bartlett earth station of the Communications Satellite Corporation (Comsat), and authorize its use as a domestic satellite earth station in conjunction with the RCA proposed interim system. (File No. 78–CSG–AP–70, filed October 16, 1969.) Comsat, which orginally opposed that request, has since withdrawn its opposition and agreed to sell the Bartlett earth station to RCA Alascom—such transfer to be effective when the RCA interim system commences operation, subject to the Commission's consent to the assignment of license. In the event that the Commission declines to approve the transfer of the Bartlett earth station, RCA Alascom seeks authority to construct a new earth station, preferably adjacent to the Bartlett site or in the vicinity of Anchorage at Girdwood.

5. The RCA applicants state that the initial system would require an investment of approximately $7.4 million in earth stations if a new earth station is authorized for Anchorage or approximately $10.3 million if acquisition of the Bartlett earth station is approved. RCA Alascom proposes to provide its presently authorized services within Alaska and between Alaska and the contiguous 48 States, as well as new services. In the contiguous 48 States, Alaskan message toll telephone (MTT) traffic would be interchanged with AT&T at

[1] RCA Alascom has been granted a partial waiver of Section 319(d) of the Communications Act to permit construction of the Juneau earth station, and presently has special temporary authority to operate the station with the space segment of the INTELSAT and the Bartlett earth station to provide service between Juneau and Anchorage.

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the earth stations; initially only at the San Francisco earth station until additional points of interconnection at other RCA earth stations are established with AT&T. For other services, necessary connecting facilities between earth stations and nearby cities would be acquired from authorized carriers. RCA Globcom proposes to provide voice, data and television services among the New York, Los Angeles and San Francisco earth stations, and other new services such as cable television program transmission service. RCA Globcom and RCA Alascom state that they are not requesting authority to provide any telegraph or telex service on the interim system.

6. The RCA applicants assert that a grant of their interim system proposal would immediately open up additional areas of Alaska to direct satellite communication with the contiguous 48 States, would immediately alleviate communications shortages and otherwise greatly improve communications services for Alaska, and would result in a lower cost of providing MTT and other communications services which would more than justify the capital outlay involved. According to RCA Alascom, the Juneau earth station would have the capacity to alleviate a serious shortage of service between Central and Southeast Alaska, particularly between Juneau and Anchorage. Moreover, it is estimated that voice grade circuits in the proposed interim system would cost RCA Alascom an average of approximately $19,000 each per annum, as compared to the following payments to others for existing facilities:

Existing routes:	*Annual payouts per voice grade circuit*
Bartlett earth station to Jamesburg earth station	$36,000
Bartlett earth station to Juneau earth station	*$45,900
Juneau to Seattle via Tropo/cable route	$26,000

*This includes a 2.5 cost factor for use of a nonstandard earth station in the INTELSAT system.

RCA Alascom states that use of the interim system would therefore allow it to replace approximately 130 INTELSAT circuits estimated to be in use in 1974 between the Bartlett and Jamesburg earth stations with circuits costing far less. RCA Alascom would also be able to relieve the overloaded tropo route between Juneau and Anchorage, and add 14 needed expansion circuits between these points at less than half the cost per circuit via INTELSAT facilities. Use of the interim system would further provide needed relief of 10 circuits on the route from Juneau to the contiguous 48 States and permit the transfer to satellite, at further rental savings, of 20 of the circuits now handled via tropo and cable.[2]

7. The RCA applicants have filed a statement by their parent corporation, the RCA Corporation, containing a commitment that it will supply all of the capital requirements of their proposed interim and follow-on domestic satellite systems. The financial statement of the RCA Corporation shows that as of the end of 1972 its net worth was more than $975 million, and current assets exceeded current liabilities

[2] The total number of voice circuits for which authority is requested are:

Anchorage	150
Juneau	50
San Francisco	170
Los Angeles (directly or via San Francisco)	90
New York	140

by $781 million. In the event that the domestic satellite operation experiences operating losses, RCA Corporation is also committed to furnish to the RCA applicants funds as required equal to any out-of-pocket expenses which are not covered by revenues. RCA Corporation has specifically represented that it will not call upon the RCA applicants for return of capital or repayment of loans expended on the domestic satellite system out of any funds other than those generated by the domestic satellite system. In addition, RCA Corporation will not require the payment of interest on such loans at any time when the operating revenues of the system are not sufficient to cover such payments after full provision has been made for payment of out-of-pocket expenses to others. Even if ultimately, the domestic satellite operation should turn out to be unsuccessful, RCA Corporation will bear the losses and will in no way burden the other operations of the RCA applicants with the financial consequences of these losses. The applicants further state that RCA Alascom would be required to assume only the costs involved in that share of the domestic satellite facilities which is actually required by RCA Alascom, and that the same would be true with respect to the international voice/record operations of RCA Globcom, so that the domestic operations of RCA Globcom would bear the full risk of the possibility that the system would not be sufficiently loaded to be profitable. RCA Globcom agrees not to point to the losses, if any, from the domestic satellite operations as a basis for possible increases, or inability to effect decreases, in rates for international service.

Opposition Pleadings

A. Western Union

8. Western Union asserts that the Commission may not grant the RCA applications without first resolving the question of whether Section 222 of the Communications Act bars RCA Globcom, an international record carrier, from providing record services between and among the lower 48 States. It claims that if Section 222 imposes restraints on Western Union's proposed Mailgram service and proposed earth station in Hawaii, then the Commission should impose a similar barrier precluding the international record carriers from entering the domestic sphere of communications. Western Union further claims that a grant to the RCA applicants would nullify the gateway provisions in Section 222(a)(5).[3] In addition, on August 15, 1973, Western Union filed a Petition to Dismiss or Deny the application for the New York area earth station, File No. 22–DSE–P–73. The petition was sought on the grounds that RCA had failed to comply with the Rules in that the application did not supply sufficient technical information for any potentially affected party to determine the interference impact of this station.

B. Miscellaneous

9. *Western Union International* (WUI) opposes the proposal of RCA Alascom to reroute one direct satellite circuit from Anchorage

[3] While Western Union also claimed that the RCA applications were deficient in supplying certain information, these contentions are now moot since the RCA applicants have supplied the information involved.

(via Bartlett) to Hawaii. This circuit was set up to provide service to the Federal Aviation Administration, and it was awarded by the Defense Communications Agency to WUI as the prime contractor and carrier at the Hawaii terminal. WUI claims that the proposal constitutes a discontinuance of service, without the showing required by Section 214 of the Communications Act or compliance with Part 63 of the rules. WUI requests the Commission to reject this portion of the RCA proposal. WUI also has pending an application for an ownership interest in the Bartlett earth station (File No. 79–CSG–AP–70), and in that connection opposed RCA Alascom's application for 100% ownership of the Bartlett earth station.

10. *American Satellite Corporation* (ASC) urges that the RCA proposal is inconsistent with the Commission's policy on the use of Telesat Canada satellites (FCC 73–427, adopted April 18, 1973) because the RCA applicants are allegedly not actively pursuing their applications for the satellites for the proposed Phase II system.

11. The Petition to Deny filed by the *Network Project* raises the identical contentions against the RCA applicants that the Network Project has urged against National Satellite Services, Inc., American Satellite Corporation, and Western Union. Those contentions are described and discussed in our actions on the applications of National Satellite Services, Inc. (FCC 73–961) and American Satellite Corporation (FCC 73–959). Accordingly, we will not repeat such description and discussion, and will deny the Petition of the Network Project on the same grounds here.[4]

Response of RCA applicants

12. In response to Western Union's argument, the RCA applicants claim that the Commission resolved the Section 222 question in their favor in the proceedings in Docket No. 16495 and that having failed to seek reconsideration, Western Union cannot raise the issue now. In any event, the RCA applicants urge that Section 222 is not a bar, since no consolidation or merger is here proposed; rather they are seeking to increase the number of competitors. Moreover, they are not requesting authority to provide domestic telegraph or Telex service via satellite.

13. In response to *WUI*, RCA Alascom claims and we agree that it would be economically absurd to operate the Bartlett earth station, or to build a second antenna, for the sole purpose of providing a single circuit. Its proposal to re-route the circuit at issue to the lower 48 States for transmission via satellite to Hawaii contemplates that the rate paid by the user and WUI participation would remain the same and obviates any Section 214 question as raised by WUI.

14. In response to *ASC*, the RCA applicants claim that they are vigorously pursuing their proposal for a domestic space segment. They point to the fact that they have filed numerous requests for immediate

[4] To the extent that the Network Project asserts that the RCA applicants should be disqualified on anti-trust grounds, we note that a similar contention was rejected in Docket No. 16495. See, *Second Report and Order* in Docket No. 16495, paragraph 19, adopting paragraphs 82–83, 93 of the staff recommendation (35 FCC 2d 844, 851; 34 FCC 2d 1, 43–44, 48–49, 80–81). We decline to conclude that the RCA applicants are disqualified on the basis of antitrust considerations.

action on their applications for construction permits for the satellites or, alternatively, for a waiver pursuant to Section 319(d) of the Communications Act to proceed immediately with procurement of the satellites. We note further that the RCA applicants have been granted a waiver pursuant to Section 319(d) to contract for procurement of the uprated Thor Delta launch vehicles and for necessary modifications of the launch vehicle and launch pad. Such contracts amount to approximately $23.5 million.

DISCUSSION AND CONCLUSIONS

A. Section 222 issue

15. We agree with the RCA applicants that the question of whether Section 222 constitutes a bar to their domestic satellite operations was resolved in their favor in Docket No. 16495. The Section 222 argument was raised by the parties and considered in the Common Carrier Bureau's *Proposed Second Report and Order* in Docket No. 16495, 34 FCC 2d 9, 48–49 (1972). In our *Second Report and Order* in Docket No. 16495 we agreed with the staff's conclusion that none of the pending applicants was disqualified on the basis of the information then before us (35 FCC 2d 844, 851 (1972)). Moreover, in the *Second Report* and in the *Memorandum Opinion and Order* denying consideration we concluded that RCA Alascom was entitled to own earth stations in Alaska and to interconnect with AT&T in the lower 48 States in providing Message Toll Telephone service via domestic satellites, and did not foreclose the possibility that such service could be provided by means of satellites owned by the RCA applicants (35 FCC 2d at 856–859; 38 FCC 2d 665, 692–697). Western Union did not seek reconsideration or judicial review of our orders in Docket No. 16495 which are now final.

16. In any event, it is our opinion on the merits that the RCA applicants are not legally disqualified under Section 222 and should not be disqualified as a matter of policy. Section 222 prohibits consolidation and mergers of international and domestic telegraph carriers. We have previously ruled that RCA Alascom is not a domestic telegraph carrier, even though its parent RCA Globcom is an international carrier, and is not barred by Section 222 from providing domestic service. *RCA Alaska Communications, Inc.*, 22 FCC 2d 200, 202–203 (1970). While RCA Globcom is an international telegraph carrier, the domestic satellite applications of the RCA applicants do not propose any consolidation or merger. Hence, Section 222 by its terms is inapplicable to the instant situation.

17. We are further of the view that it would be contrary to the public interest and our domestic satellite policies to bar the RCA applicants from domestic satellite operations as a matter of policy. This view is based on the consideration set forth in paragraphs 14–17 of our action on the interim domestic satellite system applications of American Satellite Corporation in disposing a similar Section 222 argument (FCC 73–) which we incorporate herein by reference. It is to be noted that RCA Alascom is proposing to use domestic satellite facilities primarily to provide and expand its existing services particularly in providing intra-Alaskan service. We have previously

ruled that the public interest would be best served by authorizing RCA Alascom to use domestic satellites to provide such intrastate Alaska services as well as interstate message toll telephone service by interconnection with AT&T in the lower 48 States *Memorandum Opinion and Order* in Docket No. 16495, 38 FCC 2d 665, 692–697 (1972), and see *RCA Alaska Communications, Inc.*, 26 FCC 2d 466, 473–474 (1970). Insofar as RCA Globcom is concerned, it proposes to become an additional competitor for customers and users of communication services within and among the contiguous 48 States. The consideration set forth in the *Second Report and Order* in Docket No. 16495 in favor of such competition are applicable hereto. Furthermore, it is to be noted that neither RCA Alascom nor RCA Globcom are seeking authorization to provide telegraph or telex services. As stated in paragraph 14 of our decision on the American Satellite Corporation interim domestic satellite system, we construe the term "record communications by wire or radio" to embrace those types of services being carried on by Western Union at the time Section 222 was enacted, principally message telegram service.

18. For all of the foregoing reasons, we conclude that neither RCA Globcom nor RCA Alascom is disqualified under Section 222 from providing the types of domestic satellite services here proposed.

19. Upon consideration of the radiation hazard and other environmental data set forth in the instant applications and their amendments, we are satisfied that construction of these earth stations will comply with the policies concerning radiation limits and environmental protection requirements set forth in the Commission's *Memorandum Opinion and Order* of December 21, 1972 in Docket No. 16495 (38 FCC 2d 665, 703–704).

20. In paragraph 7 above, we reviewed the method planned to be followed by the RCA Corporation in financing the domestic activities of the RCA applicants. Nevertheless, we are left with a major concern that we feel must be addressed at an appropriate time with respect to the proposals of the RCA applicants. This concern stems from the extent to which the international record communications operations of RCA Globcom will be intermixed with the domestic operations contemplated by the pending proposals. This concern was raised by the staff with the RCA applicants in terms of possible adverse effects that might result to the international operations, rates and revenue requirements of RCA Globcom from the commingling of the management, administration and operation. The staff also suggested the formation of a separate subsidiary, owned directly by the parent of applicants, RCA Corporation, for the conduct of the proposed domestic satellite operations. RCA has responded at length to the questions raised by staff and has set out in great detail the measures it and its parent propose to take with respect to financing the domestic operations and allocating common costs in order to prevent the domestic venture from burdening or impinging, in any respect, upon its international operations. The applicants also contend that there are substantial benefits to be derived from the experience and expertise in communications and satellite matters that RCA Globcom can impart to efficient domestic operation.

21. RCA Globcom is one of the principal international carriers furnishing worldwide communications services which are essential to the national interests of the United States. It is vital to the public interest that RCA Globcom's capacity to continue in this role not be significantly impaired by the vicissitudes and uncertainties inherent in the domestic communications satellite market. On the other hand, the arguments advanced by RCA Globcom appear to have sufficient merit to warrant further consideration before we reach a final determination in this matter.

22. We also recognize the urgent need for progress in providing domestic service via satellite facilities and do not wish to penalize the applicants by delaying their entry into this new market while we are giving further consideration to this aspect of the matter. Our concerns with respect to a separate entity relate to long range effects on RCA Globcom's international common carrier operations as, for example, such occurrences as a series of launch failures, or other technical problems, or failure to attract sufficient business to maintain the domestic satellite operations other than the immediate contracting for the initial satellites and earth stations. (See paragraph 18 of our *Second Report and Order* in Docket No. 16495.)

23. Accordingly, we are satisfied that it will not create any serious detriment to the public interest if we were to authorize the applicants to proceed with their plans for their proposed interim system while we give further consideration to the public interest issues involved in the establishment of a completely separate subsidiary to participate in the domestic communications market. It is our intention, however, to make a determination as promptly as we can as to whether the proposed domestic operations of the applicants should be transferred to and encompassed within a separate subsidiary. Preferably, such determination should be made in connection with our action on applicants' permanent system proposal. It should be clearly understood by the RCA applicants that our grant of authorization to proceed with their interim program is without prejudice in any way to the ultimate resolution we must make of the separate corporation issue. We will require applicants to file a written statement of their acceptance of this condition, including a waiver of any claim of prejudice because the decision on the issue of a separate corporate entity has been delayed, before they may implement the authorizations being granted hereby.

24. We agree with the Western Union petition concerning RCA's application for its New York area earth station that information remains to be supplied to enable potentially affected users to determine the interference impact of this station, and that they must be given sufficient time to evaluate it. This requirement was established by our revisions to Parts 21 and 25 of our Rules which revisions took effect on May 7, 1973 (Docket No. 19495, 40 FCC 2d 395). Ordinarily, such potentially affected users would be able to make such evaluations during the 30 day prior-coordination period. In this regard, however, we note that Western Union, along with other potentially affected users have had time and the opportunity to review the application for, and characteristics of, a General Electric earth station at almost the same location, File No. 11–DSE–P–73, filed on March 5, 1973. Western Union made no adverse comment, or any comment at all,

regarding the interference potential of that station. Thus, it would seem reasonable to permit Western Union sufficient time to ascertain if the *differences* between the RCA Globcom and the GE applications would increase the likelihood of interference to any of its operations. We think that two weeks from the date the data are supplied should suffice for those determinations.

25. Accordingly, IT IS HEREBY ORDERED That subject to the requirements and limitations prescribed by our *Second Report and Order* in Docket No. 16495 as amended by our *Memorandum Opinion and Order* of December 21, 1972, the above-captioned applications ARE GRANTED and RCA Global Communications, Inc. and RCA Alaska Communications, Inc. ARE AUTHORIZED to construct the earth stations as specified herein in conformity with the specifications and parameters set forth in the construction permits and the conditions set forth herein.

26. IT IS FURTHER ORDERED, That the grant of the application for the RCA Globcom earth station in the New York area, File No. 22–DSE–P–73 shall not take effect unless and until the Chief, Common Carrier Bureau determines upon a showing by RCA that operation of this station will not likely cause, or receive, interference.

27. IT IS FURTHER ORDERED That construction of the earth stations shall be completed in accordance with the technical specifications listed in the construction permits, no later than 18 months after the date of issuance of this authorization and that failure to complete construction within such time period shall result in automatic forfeiture of this authorization unless such construction period is extended by the Commission for good cause shown.

28. IT IS FURTHER ORDERED That the authorization granted herein shall not become effective until the applicants each file the written statement and waiver specified in paragraph 23, *supra*.

FEDERAL COMMUNICATIONS COMMISSION.
VINCENT J. MULLINS, *Acting Secretary.*

ATTACHMENT 1.—*RCA applications for earth stations in the interim system*

File No.	City served	Station location	Application received	Amendments received	Antenna(s)
50-DSE-P-71	New York	Rowland, Pa.	3/11/71	12/10/71 11/17/72 3/12/73 5/12/73	one 33-foot diam.
54-DSE-P-71	Los Angeles	Bonsall, Calif.	3/11/71	12/10/71 11/17/72 3/12/73 5/7/73 7/12/73	one 45-foot diam.
55-DSE-P-71	San Francisco	Pt. Reyes, Calif.	3/11/71	12/10/71 11/17/72 3/12/73 5/7/73 5/17/73	one 30-foot diam.
72-DSE-P-71	Anchorage	Talkeetna, Alaska	3/11/71	12/10/71 11/17/72	one 97-foot diam.
73-DSE-P-71	Juneau	Lena Point, Alaska	12/28/70	3/11/71 12/10/71 11/17/72 3/12/73	one 30-foot diam.
13-DSE-P-73	Anchorage	Girdwood, Alaska	3/12/73		one 30-foot diam.
22-DSE-P-73	New York	Valley Forge, Pa.	6/26/73		one 30-foot diam.

F.C.C. 73-902

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re RIVERSIDE CABLE CORP., CITY OF PERRIS, CALIF. Request for Order to Show Cause	CSC-37 CA 558

MEMORANDUM OPINION AND ORDER

(Adopted September 6, 1973; Released September 13, 1973)

BY THE COMMISSION: COMMISSIONER ROBERT E. LEE ABSENT

1. On December 22, 1972, Video Communications, Inc., operator of a cable television system at City of Perris, California, filed a "Petition For Issuance of Order To Show Cause Why a Cease and Desist Order Should Not Be Issued" (CSC-37) in which it asks that the Commission issue an order directing Riverside Cable Corporation to show cause why it should not cease and desist its cable television operations in contravention of the Commission's Rules. On January 16, 1973, Riverside filed a "Motion To Dismiss Petition Requesting Issuance of Order To Show Cause," [1] and on January 24, 1973, Video filed an "Opposition To Motion To Dismiss."

2. Video is an existing cable television operator in the City of Perris, and asks that we issue an Order to Show Cause against Riverside, a competing operator in the same community, for constructing its cable television system before obtaining a Certificate of Compliance from this Commission. In support of its request, Video argues that implicit in Section 76.11(a) of the Commission's Rules [2] is a prohibition against system construction until a Certificate of Compliance has been issued.[3] In this regard, Video relies primarily on the fact that one of the policies underlying Section 319(a) of the Communications Act of 1934, as amended,[4] was to insulate the Commission from the pressure a large financial investment might have on it when making a broadcast licensing decision. We recognize that analogous problems could be presented; nonetheless, the rules adopted in the *Second Report and Order*, 2 FCC 2d 725 (1966), and those contained in *Cable Television Report and Order*, 36 FCC 2d 143 (1972), are geared to become operative only with carriage of broadcast signals, and we believe the explicit language of Section 76.11 of the Rules makes this clear.

[1] On January 8, 1973, Riverside had filed a "Motion for Continuance."

[2] Section 76.11(a) provides that:
"No cable system shall commence operations or add a television broadcast signal to existing operations unless it receives a certificate of compliance from the Commission."

[3] On March 14, 1973, Riverside filed an application (CAC-2189) for Certificate of Compliance for its proposed system at Perris.

[4] Section 319(a) of the Communications Act of 1934, as amended, provides in relevant part that:
"No license shall be issued under the authority of this Act for the operation of any station the construction of which is begun or is continued after this Act takes effect, unless a permit for its construction has been granted by the Commission."

In view of the foregoing, the Commission finds that issuance of the requested "Order To Show Cause" would not be consistent with the public interest.

Accordingly, IT IS ORDERED That the "Petition for Issuance of Order to Show Cause Why a Cease and Desist Order Should Not Be Issued" filed December 22, 1972, by Video Communications, Inc., of City of Perris, California, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Acting Secretary.*

F.C.C. 73–894

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of SEABOARD BROADCASTING CORP., JACKSONVILLE, N.C. For Renewal of License of Station WLAS	Docket No. 18814 File No. BR–2961

APPEARANCES

Robert W. Healy (Miller, Gordon & Healy) on behalf of Seaboard Broadcasting Corporation; *Pierre E. Mailloux* and *Thomas Christensen* (Welch & Morgan) on behalf of SENCLand Broadcasting Systems, Inc.; *J. Richard Carr* (Dempsey & Koplovitz) on behalf of Brown Broadcasting Company; and *Thomas B. Fitzpatrick, Howard J. Schellenberg, Jr.*, and *Walter C. Miller* on behalf of the Chief, Broadcast Bureau, Federal Communications Commission.

DECISION

(Adopted September 6, 1973; Released September 12, 1973)

BY THE COMMISSION: COMMISSIONER ROBERT E. LEE ABSENT; COMMISSIONER JOHNSON DISSENTING.

1. This proceeding involves the application of Seaboard Broadcasting Corporation (Seaboard) for renewal of the license of standard broadcast station WLAS, Jacksonville, North Carolina (910 kHz, 5 kw, daytime only).[1]

The following issues now govern this proceeding:

1. To determine:

(a) Whether the licensee knowingly issued affidavits of performance which contained false information concerning the amount actually charged for broadcast advertising;

(b) Whether the licensee knowingly issued affidavits of performance which misrepresented the nature, content or quantity of advertising broadcast by Station WLAS;

[1] The proceeding began as a revocation proceeding against Seaboard's license for station WLAS because of fraudulent billing practices allegedly engaged in by WLAS. The Order to Show Cause also constituted a Notice of Apparent Liability to Seaboard so that, if the hearing record did not warrant revocation of the license, it could be determined whether the licensee has willfully or repeatedly violated Section 73.124 (now Section 73.1205) of the Rules, and, if so, whether an Order of Forfeiture in the amount of $10,000 or some lesser amount should be issued. When Seaboard's renewal application and the application of a challenger (SENCLand Broadcasting Systems, Inc.) were filed, the Commission consolidated the revocation proceeding for hearing with the two applications which were mutually exclusive. Subsequently, the Commission terminated the revocation aspect of the proceeding, stating that the same noncomparative issues were to be considered in connection with Seaboard's renewal application and that the forfeiture provisions would remain available. Later, the Presiding Judge dismissed SENCLand's application with prejudice, leaving only Seaboard's renewal application, and the issues pertaining thereto, for consideration and resolution.

(c) Whether the licensee has willfully or repeatedly violated Section 73.124 [now 73.1205] of the Commission's Rules;

(d) Whether during the Commission's inquiry into this matter the licensee misrepresented facts or was lacking in candor in responding to inquiries by members of the Commission's staff.

(e) Whether the licensee possesses the requisite qualification to remain a licensee of the Commission.

2. To determine:

(a) Whether Seaboard Broadcasting Corporation has made misrepresentations to the Commission in its renewal application filed September 2, 1969 (BR-2961), and/or in pleadings and logs filed with the Commission in this proceeding, and whether respondent's representations as to the duration of its spot announcements are accurate and to be relied upon; and

(b) Whether, in light of the evidence obtained pursuant to the foregoing issue, a grant of the application of Seaboard Broadcasting Corporation for renewal of license would serve the public interest, convenience, and necessity; and

(c) Whether, in light of the evidence obtained pursuant to the foregoing issues, Seaboard Broadcasting Corporation possesses the requisite qualifications to be a Commission licensee.

3. To determine whether Sidney Popkin and Jerry Popkin have misrepresented their employment relationship with Station WLAS to the Commission, and, in light of evidence adduced pursuant to the foregoing, whether Seaboard Broadcasting Corporation possesses the requisite qualifications to continue as a Commission licensee.

4. To determine whether Seaboard Broadcasting Corporation has misrepresented the coverage area and contours of Station WLAS to the public and its advertisers, and in light of evidence adduced pursuant to the foregoing, whether Seaboard Broadcasting Corporation possesses the requisite qualifications to continue as a Commission licensee.

2. Administrative Law Judge Forest L. McClenning released an Initial Decision on May 11, 1972 (FCC 72D-30), wherein he concluded that renewal of the license for station WLAS would serve the public interest, convenience and necessity, and he recommended a grant of the application to renew such license to expire on December 1, 1972. At the same time, the Judge recommended that Seaboard forfeit to the United States the sum of $10,000 for certain violations of the Commission's Rules.[2] The Chief, Broadcast Bureau argues that the record herein calls for denial of Seaboard's license renewal application, and he requests oral argument before the Commission *en banc* on his excep-

[2] The following pleadings are now before the Commission: exceptions and supporting brief, filed June 12, 1972, by the Chief, Broadcast Bureau; statement in support, in part, and supporting brief, filed June 12, 1972, by Seaboard Broadcasting Corporation; reply thereto, filed June 19, 1972, by the Chief, Broadcast Bureau; contingent replies to the Chief, Broadcast Bureau's exceptions, filed July 14, 1972, by Seaboard Broadcasting Corporation; motion to strike certain exceptions of the Chief, Broadcast Bureau, filed July 14, 1972, by Seaboard Broadcasting Corporation; and an opposition thereto, filed July 26, 1972, by the Chief, Broadcast Bureau.

tions to the Initial Decision.[3] We shall affirm Judge McClenning's Initial Decision without hearing oral argument, because our examination of the record and the pleadings herein persuades us that his findings of fact and conclusions of law are essentially correct and accurately reflect the record. In these circumstances, we believe that hearing oral argument would serve no constructive purpose. Accordingly, Judge McClenning's findings of fact and conclusions of law are adopted. Our rulings on the exceptions taken to the Initial Decision are set forth in the Appendix attached hereto.

3. The first of two major areas wherein the Bureau disagrees with the Initial Decision relates to Seaboard's violations of Section 73.1205[4] of the Commission's Rules. The Bureau argues that the Judge limited his findings on fraudulent billing to the three instances set out in the Bill of Particulars, thereby ignoring eight other instances of fraudulent billing which occurred during 1968, resulting only in the assessment of a forfeiture rather than outright denial of Seaboard's application for renewal of WLAS' license. Manifestly, evidence relevant to the designated issues is not to be excluded merely because it was not included among the specific instances on which the hearing is based. *Chronicle Broadcasting Company*, 20 FCC 2d 33 (1969), reconsideration denied, 23 FCC 2d 162. It is obvious, however, that the Judge did not violate these principles, for, contrary to the Bureau's contention, he made findings regarding fraudulent billing over and above those instances set forth in the Bill of Particulars. (See, particularly, par. 16 of the Initial Decision). The billing activities of WLAS and the methods employed by a principal of WLAS in requesting affidavits of performance, as more fully described in the Judge's findings of fact, clearly violated Section 73.1205 of the Rules. While such activities and violations are certainly not to be condoned, we agree with the Judge that a case has not been made out for denying the WLAS renewal application on this score. Given the circumstances as reflected in the record of this proceeding, imposition of a forfeiture is the appropriate sanction to be applied against Seaboard.

4. The second major area[5] of the Bureau's challenge to the Initial Decision concerns the Judge's holding that the one-time use by Seaboard of the coverage map for station WLAS, whose contours were not portrayed accurately, is not a matter raising substantial public interest questions. In so holding, the Judge pointed out, however, that Sea-

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[3] In its motion to strike, filed July 14, 1972, Seaboard requests that all or part of the Bureau's exceptions be stricken as violative of Section 1.277(a) of the Commission's Rules. Seaboard asserts that rather than detail and support its exceptions in the manner required by the Rules, the Bureau, in large part, cross-referenced its proposed findings which were submitted to the Judge.We shall deny Seaboard's motion to strike. In the particular circumstances of this proceeding, we believe that some latitude should be given the Bureau regarding its method of taking exceptions inasmuch as it believed that the Judge failed to make numerous findings of fact which are relevant and of decisional significance.

[4] Section 73.1205 reads, in pertinent part, as follows:

"No licensee of a standard . . . broadcast station shall knowingly issue to any local, regional or national advertiser, . . . or any other party, any bill, invoice, affidavit or other document which contains false information concerning the amount actually charged by the licensee for the broadcast advertising for which such bill, invoice, affidavit or other document is issued, or which misrepresents the nature or content of such advertising, or which misrepresents the quantity of advertising actually broadcast (number or length of advertising messages) or the time of day or date at which it was broadcast. . . ."

[5] The Bureau has also questioned the Initial Decision in certain other respects but we need not discuss these matters inasmuch as we are fully in agreement with the Judge's Initial Decision.

board had an obligation to show that the contours were accurately portrayed, which obligation it did not meet. The Bureau submits that the Judge erred in not concluding that Seaboard's application for renewal of the license of WLAS should be denied because of the false representations made to the public regarding WLAS's coverage. The Bureau argues that such false representations do not comport with the standards of accuracy and disclosure which a Commission licensee must meet. The use of an inaccurate and exaggerated coverage map is not to be tolerated, and certainly any practice intended to deceive or mislead advertisers or the public cannot be condoned. See *Miracle Valley Broadcasting Company, Inc.*, FCC 73–798, released August 1, 1973, and the cases cited therein. We agree with the Judge's holding in this matter. We believe Seaboard's one-time use of the coverage map in the local newspaper to announce a change in the music format of WLAS differs markedly from the situations presented in *Miracle Valley* and the cases there cited. As the Judge observed here, Seaboard did not use the map in the direct solicitation of advertisers nor was it used in connection with WLAS's rate card.

5. Remaining for discussion is the Bureau's statement that the Judge recommended a grant of renewal of the license for WLAS "on a short term basis." The Judge issued his Initial Decision on May 5, 1972, and he recommended a grant of the renewal application to expire December 1, 1972. But looking at the Initial Decision in its entirety gives us no indication that the Judge intended that the grant of the renewal be other than on a regular basis. The license period for which Seaboard sought renewal of the WLAS license would have run from December 1, 1969 to December 1, 1972. We believe that the Judge specified the December 1, 1972 date because North Carolina licenses were due to expire on that date. Since the action now taken on renewing the license for station WLAS falls within the North Carolina license renewal period of December 1, 1972 to December 1, 1975, Seaboard's license will expire on December 1, 1975.

6. Accordingly, IT IS ORDERED, That the motion to strike certain exceptions of the Chief, Broadcast Bureau, filed July 14, 1972, by Seaboard Broadcasting Corporation IS DENIED.

7. IT IS FURTHER ORDERED, That the applicatian (BR–2961) of Seaboard Broadcasting Corporation for renewal of license for standard broadcast station WLAS, Jacksonville, North Carolina, IS GRANTED.

8. IT IS FURTHER ORDERED, That Seaboard Broadcasting Corporation, licensee of station WLAS, FORFEIT to the United States the sum of $10,000.00 for violations of the Commission's Rules as shown in the above Decision. Payment of the forfeiture may be made by mailing to the Commission a check or similar instrument drawn to the order of the Federal Communications Commission.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Acting Secretary.*

APPENDIX

RULINGS ON EXCEPTIONS OF THE CHIEF, BROADCAST BUREAU*

Exception No.	*Ruling*
1, 5	Denied. See par. 3 of the decision herein.
2, 3, 4, 6, 7, 10, 14, 18, 20, 21, 22, 24, 25, 26, 27, 29, 33, 34, 36, 37, 38.	Denied. The requested findings are not of decisional significance in light of our decision herein.
8	Denied. While the judge did not make his findings in the narrative form requested by the Bureau, his findings accurately and adequately reflect the record herein.
9	Denied. The Bureau's transcript references do not support the findings requested that fraudulent billing had been going on prior to 1968 and as early as 1966.
11	Denied. There is no conflict in the testimony of Jerry and Ivins Popkin regarding who handled all of the affidavits and invoices for both furniture stores and submitted them to manufacturers to obtain advertising allowances. While Jerry Popkin received affidavits for Boomtown Furniture, Ivins Popkin processed such affidavits for Boomtown Furniture as well as for Furniture Fair. See Tr. 241, 373–4, and Broadcast Bureau Exhibit 8, par. 5.
12, 17, 28	Denied. The judge's findings are an accurate reflection of the record.
15, 16, 31	Denied. The judge's findings adequately reflect the record.
19	Denied. See the Commission's language in Glenn West, FCC 73–688, released June 19, 1973.
23	Denied. The judge's finding is based upon an amendment to Seaboard's application to which the Bureau consented.
30	Denied. The judge's findings are an accurate reflection of the record, and the requested findings are not of decisional significance.
32	Denied. The judge's findings are relevant and accurately reflect the record.
35	Denied. The judge's findings are accurate and adequately reflect the record. The requested findings would add nothing of decisional significance.
39	Denied. The judge's finding is sufficiently accurate for the purposes under discussion.
40, 41, 42	Denied. The conclusions complained of find adequate support in the record. The additional conclusions requested are decisionally insignificant in light of our Decision herein. Regarding No. 42, see also par. 4 of our Decision herein.
43	Denied. The conclusions complained of find ample support in the record. See also rulings on exceptions 5, 20, 21 and 22.
44	Denied. The record warrants the conclusion that a grant of Seaboard's application for renewal of license of station WLAS would serve the public interest, convenience, and necessity. However, as concluded in our Decision herein, imposition of a forfeiture in the amount of $10,000.00 is warranted.

RULINGS ON THE EXCEPTIONS OF SEABOARD BROADCASTING CORPORATION

1, 2, 3, 4	Denied as decisionally insignificant in light of our Decision herein.

*There is no Broadcast Bureau Exception No. 13.

F.C.C. 72D-30

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of SEABOARD BROADCASTING CORP., JACKSONVILLE, N.C. For Renewal of License of Station WLAS	Docket No. 18814 File No. BR-2961

APPEARANCES

Robert W. Healy (Miller, Gordon & Healy) on behalf of Seaboard Broadcasting Corporation; *Pierre E. Mailloux* and *Thomas Christensen* (Welch & Morgan) on behalf of SENCLand Broadcasting Systems, Inc.; *J. Richard Carr* (Dempsey & Koplovitz) on behalf of Brown Broadcasting Company; and *Howard J. Schellenberg, Jr.* and *Walter C. Miller* on behalf of Chief, Broadcast Bureau, Federal Communications Commission.

INITIAL DECISION OF HEARING EXAMINER FOREST L. MCCLENNING

(Issued May 5, 1972; Released May 11, 1972)

PRELIMINARY STATEMENT

1. By Order to Show Cause and Notice of Apparent Liability released May 12, 1969 the Commission, pursuant to Section 312(a)(2) and (4) of the Communications Act of 1934, as amended, instituted a show cause proceeding directing Seaboard Broadcasting, Inc. (hereinafter Seaboard) to show cause why an order revoking its license for Station WLAS Jacksonville, North Carolina should not be issued and if not, whether an order of forfeiture pursuant to Section 503(b) of the said act in the amount of $10,000 or some lesser amount should issue. The order was issued on the basis of information raising questions as to whether the licensee had knowingly engaged in fraudulent billing practices in violation of Section 73.124 (now 73.1205) of the Commission's Rules and whether during the Commission's inquiry into this matter licensee misrepresented facts or was lacking in candor. To define the scope of the information forming the basis of the order and of the issues specified [1], the Chief, Broadcast Bureau was directed to serve upon Seaboard a Bill of Particulars "regarding the matters referred to in paragraph 2." The Bill of Particulars was served May 12, 1969 and is attached hereto as Appendix A.

2. By order of March 11, 1970 (FCC 70-272) the Commission consolidated for hearing in the show cause proceeding which was then in progress, the application of Seaboard for renewal of license of Sta-

[1] Paragraph 2 of the Order to Show Cause and Notice of Apparent Liability specified the issues and is set forth *infra* as issue 1 (a) through (e). (See paragraph 3.)

tion WLAS and the application of SENCLand Broadcasting Systems, Inc. (hereinafter SENCLand) for a construction permit for a new standard broadcast station in Jacksonville, North Carolina to operate on the facilities licensed to Seaboard. By order released December 1, 1970, for procedural reasons, the Commission terminated the proceeding in Docket No. 18549 for revocation of license of Seaboard, but specified that the same noncomparative issues which were originally designated for hearing in the revocation proceeding shall remain in this hearing and be considered with respect to the application for renewal of license of Station WLAS. By order of clarification released May 13, 1971 the Commission ruled that "as to the alleged violations of Section 73.124 of our Rules, the forfeiture sanction remains available to the Hearing Examiner should he determine in the particular facts of this proceeding that imposition of such sanction is the appropriate action."

3. By order released May 10, 1971 the petition of SENCLand to dismiss its application was granted. Extensive evidence had been taken in October of 1970 concerning the rendering of substantial service by Station WLAS under the *Policy Statement on Comparative Hearings Involving Regular Renewal Applicants* FCC 70–62, 18 RR 2d 1901. Legal effect of the dismissal of the SENCLand application is to render moot various issues directed toward the SENCLand application only and the comparative issues. Portions of the evidence taken in this phase are, accordingly, irrelevant. (See FCC 71M–735 released herein May 11, 1971.) The record compiled in this phase, however, covered in full the matters thereafter placed in issue by order released December 1, 1970 enlarging the issues to include issue 2 hereinafter noted and the parties agreed they were "willing to stand on the record as made" as to that issue. The issues remaining relevant to the proceeding are as follows:

1. To determine:

(a) Whether licensee knowingly issued affidavits of performance which contained false information concerning the amount actually charged for broadcast advertising;

(b) Whether licensee knowingly issued affidavits of performance which misrepresented the nature, content or quantity of advertising broadcast by Station WLAS;

(c) Whether licensee has willfully or repeatedly violated Section 73.124 of the Commission's Rules;

(d) Whether during the Commission's inquiry into this matter the licensee misrepresented facts or was lacking in candor in responding to inquiries by members of the Commission's staff;

(e) Whether the license possesses the requisite qualifications to remain a licensee of the Commission.

2. To determine:

(a) Whether Seaboard Broadcasting Corporation has made misrepresentations to the Commission in its renewal application filed September 2, 1969 (BR–2961), and/or in pleadings and logs filed with the Commission in this proceeding, and whether respondent's representations as to the duration of its spot announcements are accurate and to be relied upon; and

(b) Whether, in light of the evidence obtained pursuant to the foregoing issue, a grant of the application of Seaboard Broad-

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casting Corporation for renewal of license would serve the public interest, convenience, and necessity; and

(c) Whether in light of the evidence obtained pursuant to the foregoing issues, Seaboard Broadcasting Corporation possesses the requisite qualifications to be a Commission licensee.

3. To determine whether Sidney Popkin and Jerry Popkin have misrepresented their employment relationship with Station WLAS to the Commission, and, in light of evidence adduced pursuant to the foregoing, whether Seaboard Broadcasting Corporation possesses the requisite qualifications to continue as a Commission licensee.

4. To determine whether Seaboard Broadcasting Corporation has misrepresented the coverage area and contours of Station WLAS to the public and its advertisers, and in light of evidence adduced pursuant to the foregoing, whether Seaboard Broadcasting Corporation possesses the requisite qualifications to continue as a Commission licensee.

4. Prehearing conferences, hearing conferences and hearing were held on various dates in 1969, 1970 and 1971 with the record last being closed by order released October 28, 1971. Proposed findings of fact and conclusions of law were filed by the Broadcast Bureau and by Seaboard on December 3, 1971 with reply findings being filed by both on February 14, 1972.

5. The bill of particulars served on Seaboard pursuant to paragraph 5 of the Order to Show Cause and Notice of Apparent Liability specifies the relevant matters encompassed within issue 1 (a) through (e). (See Appendix A)

6. The issues herein were enlarged to include issue 2 (26 FCC 2d 649, 20 RR 2d 786) and issue 3 (26 FCC 2d 827, 20 RR 2d 926) on the basis of representations made by Seaboard in its instant application for renewal of license, in various pleadings and in sworn statements. The representations specified in the order enlarging issues to include issue 2 (26 FCC 2d 649, 26 RR 2d 786) were those allegedly made by Seaboard in Exhibit 11 to its renewal application with particular reference to the statement that "WLAS found itself exceeding its policies [policies as to commercial content]. . . . To reverse this trend, Seaboard undertook the policy of refusing to accept contracts for more than thirty (30) second spots. This . . . took some months before the full effect of using strictly thirty (30) second spots took place. As is reflected below, the result of strict enforcement of Seaboard's policy of limiting spots to thirty (30) seconds has come to fruition. Only four times in August did any hours exceed 18 minutes of commercial time and these were all under 20 minutes." The Review Board also specifically noted Seaboard's letter to the Commission subscribed and sworn to by Jerry Popkin, president, submitted in response to the Commission's letter of November 4, 1960 inquiring, *inter alia*, into the commercial policies of Seaboard and the showing of "a discrepancy between respondent's log notations and monitored evidence obtained by the Bureau concerning the duration of given spots, suggesting that certain announcements logged by respondent as one minute in length actually exceeded that time by substantial amounts." The area of

inquiry and conclusions to be reached were summarized in paragraph 6 of the order as follows

> With respect to the merits of the Bureau's petition, the Review Board is of the opinion that a sufficient question has been raised to warrant an inquiry into the nature and intent of the representations made by Seaboard in its renewal application, pleadings, and logs. In this regard, it is well established that misrepresentations made by a licensee and statements calculated to deceive the Commission may form sufficient grounds for denial of an application for renewal of license. The pleadings before the Board raise a serious question as to whether Seaboard has made misrepresentations to the Commission; therefore, an appropriate issue will be added. It may be explored at the hearing whether the language of Seaboard's representations, i.e., "refuse", "strictly", or "limit", is to be construed absolutely or whether Seaboard reasonably intended thereby merely to "favor" thirty second spots. Concomitantly, it may be determined whether Seaboard has complied with its proffered representation. Furthermore, a question has been raised as to whether the Commission reasonably may rely on Seaboard's representations concerning the duration of its commercial announcements—be they thirty or sixty second spots. As previously indicated, there is a discrepancy between the Bureau's documentation of the duration of specified announcements and the duration of such announcements as logged by Seaboard, and there is no way of ascertaining on the basis of the pleadings before us which representation is accurate. Consequently, the logging discrepancies should be considered at the hearing in conjunction with the misrepresentation issue regarding Seaboard's renewal application.

The issues were enlarged to include issue 4 (26 FCC 2d 827, 20 RR 2d 926) on the basis of an advertisement appearing in the July 13, 1970 issue of the Jacksonville Daily News which included a coverage map depicting unlabeled service contours.

7. A petition to enlarge issues which was denied also has a bearing on the proceeding. (24 FCC 2d 254, 19 RR 2d 480) The denial was based in part on statements of principals of Seaboard which formed in part the basis for subsequent adoption of issue 2. This same order also further defined issue 1. Though the requests for (a) an anti-competitive issue and (b) an over-commercialization issue against Seaboard were denied, it is there stated that "the matters raised by SENCLand may properly be explored in the context of the initial determination to be made in the renewal phase of this proceeding, i.e., whether Seaboard's past operation has been substantially attuned to meeting the needs and interests of its service area" . . . as "anti-competitive practices and over-commercialization in the operation of a broadcast facility are relevant facts in evaluating the licensee's past performance. In addition, we note that the possible anti-competitive effect of Seaboard's commercial practices on other local advertisers and stations is, at least an implicit consideration under the already specified Section 73.124 issues in the revocation phase of the consolidated proceeding."

8. Issue 3 was specified on the basis of the following:

Seaboard has not convincingly reconciled the various and conflicting sworn statements which its principals have submitted to the Commission. In answer to question 27 Section IV–A, of its renewal application for instance, Seaboard describes Jerry and Sidney Popkin as being employed part-time in the operation of WLAS. Yet, in reply to question 30 [2] of the same form, Jerry and Sidney Popkin are listed as full-time employees of the station. Still later, in reply to petitioner's

[2] The response is to question 31 rather than 30.

interrogatories, both Jerry and Sidney Popkin attest to maintaining a twelve-hour workday at their furniture stores. The Board is, consequently, at a loss to decide whether Sidney and Jerry Popkin have represented themselves to be full-time employees, part-time employees, or non-employees of Station WLAS. An issue will therefore be specified to determine whether Jerry and Sidney Popkin have misrepresented their employment relationship with Station WLAS to the Commission.

9. Specification of issue 4 was based on the following:

Comparison of Seaboard's advertising map with figures submitted to the Commission discloses that the advertising map does not label WLAS's 0.1 mv/m and 0.5 mv/m contours; moreover, the map depicts an exaggerted primary service area and does not indicate losses in coverage resulting from interference which its operation receives from other stations. Additionally, the affidavit submitted by Seaboard's chief engineer reveals that the publicity map was based on measurements which were not taken in accordance with Commission requirements. In fact, no measurement data at all was submitted to the Board by Seaboard. Seaboard's advertising map, in sum, appears not to comport with the standards of accuracy and disclosure expected of a Commission licensee. As was stated in *Universal Communications of Pittsburgh, Inc.* (21 FCC 2d 542, 18 RR 2d 491) "full disclosure as to both coverage and location is essential in conforming to the standard of candor required of licensees. . . . It is the [applicant's] obligation to show that the [map] contours were accurately portrayed." Seaboard appears to have been remiss in this regard and the consequent issue will be added to explore this matter at the hearing.

FINDINGS OF FACT

10. Seaboard is the licensee of Station WLAS (910 kHz, 5 kw, daytime only) which is one of three standard broadcast stations licensed to Jacksonville, North Carolina. The corporation was formed April 14, 1953, received its construction permit December 9, 1953 and was first licensed June 28, 1954. Initially the brothers Jerry and Sidney Popkin and the brothers Milton and Harold Adler each held 25% of the issued and outstanding stock. In 1962 Sidney Popkin transferred his interest to the Yale Mark Popkin trust, Ivins Popkin trustee. Yale Mark Popkin, a minor, is the son of Jerry Popkin. The corporation subsequently repurchased the stock initially issued to the Adlers and it is now held as treasury stock.[3] Jerry Popkin is president and a director of Seaboard, Sidney is vice-president and Ivins Popkin is secretary-treasurer and a director.

[3] The Broadcast Bureau in its proposed findings, footnote 3, states that Jerry Popkin at page 382 of the transcript when asked if he was a 50% stockholder in WLAS "hedged" and it was not until the Hearing Examiner asked the question that he admitted to such ownership. The response "Yes figuring the treasury stock. They bought in 50% of the treasury stock, so it will give me 50% if you figure it that way. If you figure it the other way . . ." was not considered by the Hearing Examiner as an attempt to hedge but rather as a fully responsive answer. The interrupting question "You own 50% of all the outstanding stock, is that not correct?" was asked by the Hearing Examiner only to avoid an immaterial alternative the witness was entering into, ownership of the outstanding stock being the fact needed to establish the parties having control of the licensee corporation.

11. At the time of issuance of the order to show cause Jerry and Sidney Popkin each held one-third of the issued and outstanding stock of Marine Broadcasting Company, licensee of Station WXQR–FM, which is one of two Class A FM broadcast stations licensed to Jacksonville, North Carolina. Alfred B. Popkin, a brother of Jerry and Sidney Popkin, held the other one-third interest. Jerry Popkin was president, Alfred Popkin vice-president and Sidney Popkin secretary-treasurer of the corporation with all being directors. Jerry Popkin on July 9, 1970 placed his stock in an irrevocable trust for the benefit of Jonathan Asher Popkin, the minor son of Sidney Popkin, and resigned as an officer and director of the corporation. Alfred Popkin then became president, Sidney Popkin vice-president with an officer of the trustee bank becoming secretary-treasurer. This change was timely reported to the Commission by the filing of ownership report FCC Form 323 on July 22, 1970.[4]

12. The Popkin brothers initially entered business in the Jacksonville area when Jerry, Sidney and Alfred opened Boomtown Grocery, Inc. in Holly Ridge, a community located approximately 20 miles from Jacksonville. Jerry is president, Alfred vice-president and Sidney secretary-treasurer of Boomtown Grocery, Inc. with all being directors. Each holds a one-third ownership interest. After the closing of the military base Camp David, Sidney and Jerry moved to Jacksonville in 1950 and opened Boomtown Furniture, Inc., a furniture and appliance store. Alfred has continued to run the Holly Ridge store, which has been expanded into a general store, and sells some electrical appliances. The officers, directors and ownership of Boomtown Furniture, Inc. are the same as that of Boomtown Grocery, Inc. Sidney Popkin is manager of Boomtown Furniture, Inc. Popkin Brothers Enterprises, Inc. and U.S. Discount Corporation, real estate corporations, were formed in 1952 and 1955, respectively, with each also holding a one-third interest in these firms. Seaboard Broadcasting Corporation also buys and sells real estate and holds real estate interests, one being a furniture store which is leased to Mills and Thomas, a furniture and appliance competitor of Boomtown Furniture, Inc., Pete McMillan Furniture, Inc. and Furniture Fair, Inc. (*infra*). In either 1954 or 1956 Jerry, Sidney, Alfred and another brother, Ivins, formed Furniture Fair, Inc., a furniture and appliance store, with each holding a 25% interest. Jerry is president, Ivins vice-president and Sidney secretary-treasurer with all being directors. The sports goods department, Furniture Fair Sports, and the jewelry department, Furniture Fair Jewelry, are operated as concessions. Reed's of Wilmington holds the rental or lease contract for the jewelry department. The Popkin brothers hold a 48% interest in F & F Sales, Inc. which operates the sports department, but have no ownership interest in the jewelry department. Furniture Fair, Inc. holds a 49%

[4] Official notice is taken of the filing of this form. At page 11, footnote 1 of the findings of fact of the Broadcast Bureau, the position is taken "that while no 1.65 failure to report issue is in this case, Jerry Popkin's failure to properly up-date his application (Section I, par. 7 of renewal application) can be considered as militating against the grant of Seaboard's renewal application." Though possibly a comparative consideration initially, it is irrelevant to any of the remaining issues and so long as SENCLand remained a party to the proceeding, amendment of Seaboard's application may not have been permitted as it would have enhanced its position in the comparative factor of diversification of the ownership of media of mass communications.

interest in Pete McMillan Furniture, Inc., a furniture and appliance store, and the four brothers each holds a 12½% interest in McMillan Real Estate which owns the building in which Pete McMillan Furniture, Inc. is located.[5] A fifth brother, Martin Popkin, owns Warehouse Sales, Inc., another furniture and appliance store located in Jacksonville, North Carolina. Other business interests include Thriftmart, Inc. an inactive entity which holds some stock in Furniture Fair, Inc. and nonrelated interests: Popkin Brothers Enterprises, a real estate holding corporation: and Foster's Men's Shop, a men's clothing store in which Ivins Popkin holds a 60% interest. Ivins Popkin also operates warehouses known as Thrift Mart and the White Building which warehouse goods for six of the retail stores associated with the Popkin brothers. Both are located near the Furniture Fair, Inc. retail store. The Popkin brothers' stores do not carry what was described as "the top end lines" of furniture, Mallory Sales, Inc. being the exclusive outlet for three such described lines in the Jacksonville area. Mallory Sales, Inc. uses printed media only for advertising purposes. Other major furniture stores in Jacksonville are Major Appliances and Television Company, Rose Brothers and Lumpkins.

13. In the operation of their furniture and appliance outlets Boomtown Furniture, Inc. and Furniture Fair, Inc. do extensive advertising in various media including the Star News; the Jacksonville Daily News; television stations WECT Wilmington, North Carolina, WITN Washington, North Carolina and WNBE–TV New Bern, North Carolina; radio stations WPGF Burgaw, North Carolina, WNCT Greenville, North Carolina, WGNI and WHSL Wilmington, North Carolina, WMBL Morehead City, North Carolina and WHIT New Bern, North Carolina; billboards through Lemar Dean Outdoor Advertising Company; and the use of "mailers."[6] The bulk of the advertising is for appliances including both television and "white goods" i.e., refrigerators, washers, dryers, ranges, etc. Furniture Fair, Inc. advertising at times also includes ads for the sports department and for the jewelry department giving these departments (see paragraph 12, *supra*) the advantage of quantity discounts. Furniture Fair pays the bills and these departments are then charged through accounting procedures for their advertising. This has also been done for Warehouse Sales, Inc. by Boomtown, Inc. for newspaper advertising. Radio advertising for both Boomtown Furniture, Inc. and Furniture Fair, Inc. is primarily on Stations WLAS and WXQR–FM. Other than for one spot per day purchased by Furniture Fair, Inc. on the "Paul Parker" morning program, all spot announcements on WLAS and WXQR–FM were purchased on a run of schedule basis giving the lowest available rate. The combined analysis of all advertising expense for the calendar year 1968 shows total advertising charges of $141,690.46 with payments made of $141,204.46. Stations WLAS

[5] Seaboard Exhibit 3 and the transcript show these percentages for Pete McMillan Furniture, Inc. and McMillan Real Estate. Broadcast Bureau Exhibit 10 reverses the percentage figures.

[6] Printed circulars distributed through the mails or by insertion in a newspaper. The term "flyers" also appears in the record to describe handbills, but they are not used by the Popkin owned entities.

and WXQR–FM account for $45,730.80 (32.3%) of the charges and $47,856.40 (33.8%) of the payments made. Affidavit submitted to the various manufacturers for allowances for advertising of their products on these stations total $23,101.80. Other principal media were the Jacksonville Daily News for newspaper advertising, $24,535.35 in charges and $27,989.80 in payments, and for direct mail advertising, $54,114.57 in charges and $53,394.90 in payments.[7] Of the total advertising charges for this year $12,572.73 (8.87%) was recovered from manufacturers through cooperative advertising allowances, $10,365.95 being from the five manufacturers specified in the bill of particulars.

14. Cooperative advertising programs vary from manufacturer to manufacturer and also between different advertising programs a manufacturer may have throughout the year. Basically, however, it can be defined as a system by which an advertising retailer is reimbursed for all or part of his advertising expenditures for a particular product or particular model of a product in accordance with the terms of the standard agreement offered by the manufacturer to all retailers. Generally the media to be used are selected by the retailer, the manufacturer specifying the particular product and some the sales price of the product. Westinghouse, however, also specifies the media to be used. Hotpoint required advance approval of the media selected by the retailer. The sum of the advertising allowance by the manufacturers here relevant was a direct percentage of total purchases by the retailers from the manufacturers. The manufacturers here in question as specified in the bill of particulars[8] are Sealy Mattress Company, The Zenith Corporation, The Sylvania Corporation, McGraw-Edison Company (Speed Queen, Coolerator and Tropicaire), and The Admiral Corporation.[9] The Admiral Corporation and Sylvania Corporation allow 2% of total purchases for co-op advertising and consider for such purposes Furniture Fair, Inc. and Boomtown, Inc. as one firm. It does not credit postage for mailer advertising toward co-op payments. Zenith Corporation gives a 2% credit for advertising and does credit postage for mailer advertising toward co-op payments provided a receipt is furnished. Zenith also specified the product price to be advertised in order to qualify for co-op allowance. The record does not reflect the percentage allowance for co-op advertising given for McGraw-Edison products. Zenith also considers for such purposes Furniture Fair, Inc. and Boomtown, Inc. a single unit. Sealy Mattress Company allows 5% of total purchases for co-op advertising and considers Furniture Fair, Inc., Boomtown, Inc. and Pete McMillan Furniture, Inc. a single unit with all deliveries being made to

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[7] Nominal amounts of the direct mail figures were for advertising in area high school papers and "the other local promotions that come along" the sums being termed "minute compared to the overall picture." These are not considered an advertising expense for co-op purposes.

[8] Paragraph 4 of the bill of particulars (Appendix A) involves a charge of double billing by Discount Furniture Company of Jacksonville, North Carolina through affidavits furnished by Station WLAS. The statement of Eustace Wood, president of that firm, attesting that inadvertent billing error rather than double billing was involved was accepted into evidence. (Broadcast Bureau Exhibit 8). Counsel for the Broadcast Bureau stated at the time of admission of this exhibit that, on the basis of its prior investigation, Eustace Wood was not being called to testify as to this matter.

[9] Cooperative advertising was also done by Boomtown, Inc. and Furniture Fair, Inc. for Simmons, Maytag, Westinghouse, Ansco GAF, Eureka, Gibson, Hotpoint, Keystone Camera, Vantage and Kroehler products. Gibson offers the alternative of a price discount or co-op advertising.

Furniture Fair, Inc. Sealy will pay the entire cost of advertising for its mattresses provided it does not exceed the amount standing to the credit of the retailer. A representative of Sealy testified that Furniture Fair, Inc. is its largest volume dealer in the area with its share of advertising costs in all instances being "a lot more" than that paid by Sealy. At times for special models the manufacturers will increase the advertising percentage allowed. Also at times a fixed sum was specified rather than a percent of purchases. Generally advertising allowance claims are submitted quarterly.

15. Under the co-operative arrangements the retailer is required to send to the manufacturer proof of his advertising expenditures. In the case of billboard advertising for Zenith such proof required the submission monthly of a picture of the billboard in addition to the preparation of an affidavit by the billboard advertising company as to the period of its use.[10] In the case of broadcast advertising proof required the submission of affidavits from the stations attesting that the advertising had been run at certain dates and times. Proof of newspaper advertising required the submission of a copy of the newspaper ad (tear sheet), an affidavit from the publisher with the date the ad was run and a statement breaking down the cost for the number of lines or inches (inches of a normal newspaper column) devoted to that particular product. Mailer advertising required the submission of a copy of the handbill ad (tear sheet), payment receipts and an affidavit as to the proportionate cost of printing and where creditable, of postage, for the particular product. (See paragraph 14, *supra*)

16. The evidentiary showing of the number of spot announcements broadcast for Boomtown, Inc. and for Furniture Fair, Inc. in the year 1968, the year placed in question by the bill of particulars, and the number for which affidavits were submitted to manufacturers consists of a detailed analysis prepared by the certified public accountant employed by the Popkin interests. The study shows, *inter alia*, the number of spot announcements broadcast for each firm based on the logs for Stations WLAS and WXQR–FM.[11] The number of spots for which affidavits were submitted to the various manufacturers is based on what is termed a "primary source of evidence for a CPA" which consists of documents and data from the various manufacturers' files and secondary sources which consist of any documents in the stations' files which indicated the existence of an affidavit. The latter

[10] Advertising charges for billboards in 1968 were $468.30 with payments made being $1498.56 for Furniture Fair and $1498.56 with payments made being $165 for Boomtown Furniture. Ivins Popkin, however, made no effort to submit the required photos and no cooperative allowance was paid by the manufacturer to either for such advertising though the manufacturer's records show receipt of the required affidavits of the billboard advertising company.

[11] The logs for four of the seven composite week dates which had been submitted with the renewal application for Station WLAS could not be located at the time of preparation of this study. These were for the days and dates of Sunday, January 28, Monday, July 22, Friday, April 19 and Saturday, February 17. Though copies of these logs are a matter of record (Broadcast Bureau Exhibit 15) the additional spot announcements shown by those logs to have been broadcast for Boomtown, Inc. and for Furniture, Inc. have not been included in these totals. Totals for those days were as follows: Boomtown—Sunday 10, Monday 10, Friday 10, Saturday 10; Furniture Fair—Sunday 10, Monday 11, Friday 16, Saturday 15.

included carbon copies of affidavits and all notations, including handwritten ones, indicating affidavits had been prepared though they could not be confirmed through the manufacturer's files. The analysis classifies those based on primary sources as confirmed affidavits and those on secondary sources as unconfirmed affidavits. This was done to give the maximum possible number of spots submitted for co-op allowances. Affidavits include those submitted to all manufacturers and all manufacturers except Eureka Williams Company and Ansco GAF Corporation responded to the requests for data. Kroehler could provide only total advertising allowance by quarters. Sylvania stated all affidavits were for television advertising which later proved to be incorrect. Admiral did not state the specific media shown by its records. Complete information was provided by the remaining eight manufacturers. Totals by month are as follows:

Month	Spots			Affidavits		
	WLAS	WXQR-FM	Total	WLAS	WXQR-FM	Total
	Boomtown Furniture, Inc.					
January	283	532	815	480	85	565
February	445	695	1,140	898	none	898
March	314	852	1,166	960	none	960
April	299	828	1,127	900	600	1,500
May	408	756	1,164	none	none	none
June	308	825	1,133	600	none	600
July	309	840	1,149	300	none	300
August	423	868	1,293	279	none	279
September	315	847	1,162	none	none	none
October	297	872	1,169	none	none	none
November	293	844	1,137	none	none	none
December	294	867	1,161	110	486	596
Totals	3,990	9,626	13,616	4,527	1,171	5,698
	Furniture Fair, Inc.					
January	464	314	778	310	none	310
February	327	318	645	1,159	none	1,159
March	413	310	723	775	none	775
April	443	300	743	1,350	600	1,950
May	582	310	892	none	none	none
June	263	300	663	890	150	1,040
July	415	317	732	310	none	310
August	772	328	1,100	900	none	900
September	483	322	805	none	none	none
October	475	333	808	110	75	185
November	423	321	744	none	none	none
December	466	330	796	53	45	98
Totals	5,631	3,803	9,434	5,857	870	6,727

As noted in paragraph 14, *supra*, the manufacturers considered the Popkin owned retail outlets a single entity for advertising allowances and Westinghouse only specified the media to be used. The following table combines the spot announcements broadcast and affidavits issued shown in the preceding table:

Month	WLAS		WXQR-FM		Total spots	Total Affidavits
	Spots	Affidavits	Spots	Affidavits		
January	747	790	846	85	1,593	875
February	772	2,057	1,013	none	1,785	2,057
March	727	1,735	1,162	none	1,889	1,735
April	742	2,250	1,128	1,200	1,870	3,450
May	990	none	1,066	none	2,056	none
June	676	1,490	1,125	150	1,801	1,640
July	724	610	1,157	none	1,881	610
August	1,197	1,179	1,196	none	2,393	1,179
September	798	none	1,169	none	1,967	none
October	772	110	1,205	75	1,977	185
November	716	none	1,165	none	1,881	none
December	760	163	1,197	531	1,957	694
Totals	9,621	10,384	13,429	2,041	23,050	12,425

17. Dollar value of all affidavits issued for the year 1968 was $30,625.68, $24,381.48 for confirmed and $6,244.20 for non-confirmed. Of the dollar value, affidavits issued by Stations WLAS and WXQR-FM accounted for $23,101.80 (75.4%) with $12,665.40 being through Furniture Fair, Inc. and $10,436.40 being through Boomtown, Inc. Records of the various manufacturers paying advertising allowances show that $4,676.03 of the total of $12,572.73 (see paragraph 13, *supra*) was paid on the basis of these affidavits. Their records did not disclose specific media affidavits on which $5,246.03 of the advertising allowances paid were based. Allowances in the amount of $2,650.67 were paid on the basis of confirmed affidavits from the remaining media used. (See paragraph 13, *supra*) Dollar value of the confirmed and non-confirmed affidavits for advertising on all media submitted to the five manufacturers here in question for the year 1968 and the advertising allowances paid are as follows:

Manufacturer	Affidavits				Allowances	
	Nonconfirmed		Confirmed			
	Boomtown	Furniture Fair	Boomtown	Furniture Fair	Boomtown	Furniture Fair
McGraw-Edison			$2,908.67	$2,055.60	$1,713.83	$1,324.60
Sylvania	$2,786.40	$2,178.00	2,927.25	4,366.00	1,655.00	1,665.00
Admiral		302.40	540.00	540.00	661.55	688.30
Zenith		198.00	4,758.06	2,378.04	692.06	765.81
Sealy				1,822.05		1,189.80
Totals	2,786.40	2,378.40	11,223.98	11,161.69	4,732.44	5,633.51

18. By its responses to the request of the Broadcast Bureau for admission of facts respondent admits that invoices and affidavits for commercial spot announcements on Stations WLAS and WXQR-FM in excess of the actual numbers broadcast were issued for the months of April and June of 1968.[12] The following details these transactions.

[12] There are some minor differences in the total number of spot announcements broadcast for Furniture Fair, Inc. and Boomtown, Inc. shown in the admissions and the number broadcast based on an actual count from the stations' logs shown in paragraph 16, *supra*. The differences are too slight to be of any materiality.

For April of 1968 WLAS billed Furniture Fair for 405 spot announcements at $1.80 each and for 26 spot announcements on the "Paul Parker" Show at $3.00 each for a total billing of $807. It then issued four affidavits of performance attesting that WLAS had broadcast in April of 1968, 300 spot announcements for Furniture Fair at a cost of $540, one each stating for (a) Speed Queen products, (b) for Sealy mattresses, (c) for Zenith products and (d) for Sylvania products. In combination these affidavits represent that Furniture Fair had been billed $2160 for 1200 spot announcements broadcast during April of 1968. Also for April of 1968 WLAS billed Boomtown, Inc. for 300 spot announcements at $1.80 each for a total of $540. It then issued two affidavits of performance attesting that WLAS had broadcast in April of 1968, 300 spot announcements for Boomtown, Inc. at a cost of $540, one each stating (a) for Sylvania products and (b) for Speed Queen products. In combination these affidavits represent that Boomtown, Inc. had been billed $1080 for 600 spot announcements broadcast during April of 1968. For June of 1968 WLAS billed Boomtown, Inc. $567 for 315 spot announcements. It then issued two affidavits of performance attesting that WLAS had broadcast 300 spot announcements in June of 1968 for Boomtown, Inc. at a cost of $540 one each stating (a) for Speed Queen products and (b) for Admiral products. In combination these affidavits represent that Boomtown, Inc. had been billed $1080 for 600 spot announcements broadcast during June of 1968.

19. During the year 1968 Mr. Paul Parker as station manager of WLAS and WXQR–FM was primarily responsible for day-to-day operations. Messrs. Jerry and Sidney Popkin worked at Boomtown Furniture from 9:00 a.m. to 9:00 p.m. six days per week and at Furniture Fair from 1:00 p.m. to 6:00 p.m. Sundays. Jerry Popkin during that year was also active in various civic organizations being head of the Jacksonville Chapter of the American Cancer Society, past president of the Jacksonville Red Cross, director of the Jacksonville USO, Tri-State chairman of the United Jewish Appeal, member of the Board of Governors for the Old Age Home, director of North Carolina Jewish Man, director of the United Fund in Jacksonville and co-building chairman for the Jacksonville Library Fund. During the year 1968 he was at the stations only four or five times. Mr. Parker, however, would "come by the store" (Boomtown Furniture) regularly and report to Jerry and Sidney Popkin on station operations and occasionally the four, Jerry, Sidney and Ivins Popkin and Mr. Parker would have lunch together. Sidney Popkin handles the placement of all advertising for Boomtown Furniture and he would go over the particular advertising projects with Mr. Parker at these times. Whether the ads were run on Station WLAS or WXQR–FM was dependent on the type listener desired to be reached. Mr. Parker chose the particular advertising copy to be used, Mr. Sidney Popkin's participation being to order the campaign for a specified number of spots and for a "particular advertiser." [13] During this period Sidney Popkin did visit

[13] The manufacturer whose products were being featured in the advertising campaign, e.g., "I might tell Paul during any particular month that we were pushing Sylvania products and tell him to do 300 spots for Sylvania."

the stations once or twice a week to check on operations in addition to these consultations with Mr. Parker. Additionally Station WLAS was monitored by keeping receivers at Boomtown Furniture tuned to the station.

20. Ivins Popkin during the year 1968 worked at Furniture Fair from 9 a.m. to 9 p.m. Mondays through Fridays, 9 a.m. to 7 p.m. Saturdays and 1 p.m. to 6 p.m. Sundays. His duties included supervision of all phases of the Furniture Fair operation, placing all advertising for Furniture Fair, selling of merchandise and handling of complaints. In addition he did the purchasing of furniture and appliances for both Boomtown Furniture and Furniture Fair and handled the accounting for both firms. The accounting operations included securing from the advertising media statements and affidavits for co-operative advertising and their submission to the various manufacturers for advertising allowances. He also operated the warehouses noted in paragraph 12, *supra*.

21. The Jacksonville Daily News, the principal print media used, billed the advertiser at the first of each month for the previous month's advertising, by sending a single statement with copies (tear sheets) of each ad run during that month. The advertiser would then normally break the tear sheets down, returning to the newspaper the tear sheets on items for which he had co-op funds available to him. The newspaper would then measure the columns for each of these products and furnish the advertiser a separate statement for each product on which co-op allowances were available. The advertising director for the Daily News personally serviced the Furniture Fair account for part of the year 1968 and supervised the salesmen handling it the remainder of the year and the Boomtown account. He experienced difficulty in securing return of the tear sheets from Ivins Popkin to permit preparation of the co-op statements and at other times after statements had been provided they would be misplaced by Mr. Popkin and have to be done again. His description of the handling of these matters by Mr. Ivins Popkin was "I hate to say it, but the operation was quite ragged, maybe, at times." Due to limited personnel, the paper also at times would be up to a month late in providing the separate statements. Furniture Fair was the paper's largest single furniture and appliance advertiser with an estimated 50 to 60% of all such advertising being for "white goods" and television receivers on which co-op advertising allowances were available. Extensive co-op advertising was also carried for bed mattresses and springs, particularly for "truck load" sales of Sealy and Simmons mattresses for which co-operative statements were also prepared other than in those instances when the advertising was in the form of inserts not prepared by the newspaper.

22. During the year 1968 Furniture Fair spent $6335.50 and Boomtown Furniture spent $995.50 for advertising on television Station WITN Washington, North Carolina, 40% of which the sales representative for WITN handling these accounts and producing the ads estimated qualified for co-operative advertising. He was certain that Sylvania, Zenith and Sealy products had been included in this advertising, that it had not included Speed Queen products and could

not recall whether it had included Admiral products. Due to billing difficulties arising out of the additional bookkeeping required, though he requested them, Ivins Popkin was unable to secure from Station WITN the required affidavits for submission to the manufacturers for advertising allowances for the advertising done by Furniture Fair. As Boomtown Furniture usually ordered its ads for a single product affidavits were provided in those instances with the manufacturers' records checked for purposes of this proceeding showing $497.50 covered by affidavits of which $186.56 was reimbursed through advertising allowances.

23. During 1967 and 1968 Stations WLAS and WXQR–FM experienced difficulties in remaining current in the issuance of affidavits covering advertising for products for which the advertisers were entitled to a co-op allowance. The stations' bookkeeper, who also did copywriting at times, followed the practice of letting the affidavits prepared for Furniture Fair and Boomtown go until the last to be issued. The station was without a copywriter for a period of approximately five months commencing some time prior to the spring of 1968 and throughout this period the bookkeeper did copywriting in addition to her bookkeeping duties.[14] As a consequence at times it was "several" months before she completed the Furniture Fair and Boomtown affidavits. In filing for advertising allowances, one manufacturer required that the claim be filed by the 15th of the following month. Most required that they be filed on a quarterly basis and to avoid losing the allowances [15] Mr. Ivins Popkin initiated the practice of calling either WLAS or WXQR–FM and asking them to prepare an affidavit for a specific manufacturer for a specified number of spot announcements at a specified number of dollars. The bookkeeper would then prepare affidavits of performance based on these requested figures, without verifying the number or cost of the spots broadcast by checking against the stations' records, and forward them to Mr. Popkin with copies of the ads broadcast who would have them notarized. The station manager was also aware of this problem through requests by Mr. Ivins Popkin for his affidavits and both he and the bookkeeper testified that because Mr. Popkin did so much advertising and had so many different media sources of co-operative advertising they believed that he would have records of what he was entitled to. The bookkeeper did not question these requests nor inform the station manager of them. Mr. Popkin, however, based the request on the number of spots that he "thought fairly reflected the amount of advertising we had done for these manufacturers" through all media rather than on actual records. Despite the fact large numbers of spots were broadcast on Station WXQR–FM he requested generally WLAS affidavits for the reason that "he simply did not think of it" though knowing the stations on which the announcements were broadcast. His overall reasoning was that he knew the amount of adver-

[14] The economy of Jacksonville is largely dependent on the Camp Lejeune military base and the copywriters the station had been able to employ were the wives of servicemen with a consequent high turnover in personnel.

[15] A Westinghouse allowance of "several" hundred dollars was lost for failure to file a timely claim and salesmen for other companies had been reminding Mr. Ivins Popkin that if the affidavits were not filed he would lose his credits.

tising done far exceeded the small percentage for which co-op allowances were available so "the simplest way of trying to get out of my paper work problem was to use WLAS affidavits instead of affidavits from Lamar Dean or the Daily news, etc. . . . I decided that the simplest thing to do was short cut, as no one would be hurt." As shown by the tables in paragraph 16, *supra*, in February and April of 1968 total affidavits exceeded the combined total of spots broadcast for Furniture Fair and Boomtown Furniture by both stations. For January, February, March, April and June affidavits for spots broadcast on Station WLAS exceeded the combined total of spots broadcast by WLAS for Boomtown Furniture and Furniture Fair, but did not exceed the combined total broadcast by WLAS and WXQR-FM. As shown in paragraph 13, *supra*, dollar value of the advertising allowances involved was a relatively small amount (8.87%) of the total advertising done.

24. At the time of the Commission's investigation Mr. Sidney Popkin responded to the investigator that he did know what double billing was and that Station WLAS had not done so. Also that a named local business had ceased advertising on Station WLAS because Mr. Parker, the station manager, had refused to issue double bills for the advertising. At the time he believed this statement to be true. Mr. Jerry Popkin responded to this question that he did not know what double billing was. Upon it being explained he was asked "if the station was doing any double billing" and he responded "not to my knowledge." Mr. Jerry Popkin testified that he knew Mr. Ivins Popkin was having trouble securing affidavits from conversations with him, but explained to the Commission's investigator that the station's salesman was on straight salary and that the salesman might have made "just an honest error, because . . . he had nothing to gain by it." Sidney Popkin was also aware that Ivins Popkin was behind in securing affidavits from the various advertising media, but was not aware that he was calling Station WLAS to secure incorrect affidavits. Mr. Parker, the station manager, was aware of the Commission's rules re double billing and lost the account referred to by Mr. Sidney Popkin through refusal to provide them with inaccurate affidavits or invoices or to rebate sums to them through later discounted advertising. As both he and the station salesman were on straight salary, he saw no motivation for anyone at the station to indulge in double billing. It was not until after being interviewed by the Commission's investigators that he learned Mr. Ivins Popkin was requesting and receiving affidavits in the form shown in paragraph 23, *supra*. The station bookkeeper was interviewed by the Commission's investigators and stated that to the best of her knowledge that, unless there was a bookkeeping error the affidavits sent out from WLAS were accurate. Subsequent to this time she learned that Ivins Popkin "was apparently guessing the spots run and not checking them." Insofar as is shown by the record, Ivins Popkin was not interviewed at the time of the Commission's investigation.[16] He "was ignorant of the FCC rules on affidavits and simply assumed that since what

[16] The Commission's investigators were not called upon to testify during the hearing.

I was asking for was merely inaccurate as to the source of advertising but in my opinion accurate as to the fact that I was spending these sums for these co-op manufacturers, no one would be concerned over it. . . . I had no idea of the seriousness of the matter or its consequences."

25. The record shows that one of the underlying reasons that this billing scheme could be instituted was because of the manner of station operations during the time period involved. Selling, billing and operational records were not kept current. Salesmen had the responsibility of reporting cooperative advertising. No security precautions were installed to safeguard the affidavits of performance blanks, station's logs or other records. Mr. Ivins Popkin did not visit the station nor had he tried to familiarize himself with the Commission's rules on fraudulent billing. During Mr. Sidney Popkin's periodic visits to the station he did not spot check affidavits of performance and he made no check to see if Miss Lois Manion's fraudulent billing complaint had substance. The station manager, Mr. Paul Parker, did not check affidavits of performance with any degree of regularity and held no staff meetings to explain the Commission's rules and requirements though individual instructions were given as to specific duties. Mr. Jerry Popkin, Seaboard's president, only visited the station four or five times in the year 1968 and when he did visit the station made general inquiries only as to station operations.

26. Following issuance of the Order to Show Cause and Notice of Apparent Liability the principals of Seaboard reviewed and revised their accounting procedues. The affidavit and logging procedures at WLAS were completely revised. A computer was installed and four new employees retained by Furniture Fair for the primary purpose of handling the accounting functions involved in that operation. One of these employees has been given sole responsibility for handling all the advertising for Furniture Fair and Boomtown Furniture including securing the required affidavits for co-op advertising and Irvins Popkin has been removed from that responsibility, other than to see that this employee "is doing the job." The employees of WLAS have been instructed that no affidavit is to be issued to any person, including a principal of Seaboard, which has not been carefully reviewed.

27. The stations' operational and accounting procedures were also revised. WXQR–FM and WLAS were placed under separate managers with separate bookkeeping operations. The WLAS bookkeeper was relieved of any responsibility for copy work and the duties that she previously performed in the preparation of the program logs. A triple check system was instituted governing cooperative advertising. A printed cooperative advertising schedule is maintained on which the number of spot announcements ordered by each advertiser is broken down between cooperative and non-cooperative advertising. The salesmen are now required to give the bookkeeper a monthly report giving for each advertiser the total advertising ordered broken down on a daily basis between cooperative advertising and non-cooperative advertising by number of spots. The copy girl, who prepares the copy for this advertising, enters the spots on the logs and keeps a copy of the advertising copy in a separate folder for each month. Before the affi-

davits are prepared, the salesmen, the copy girl's records, and the station logs are triple checked to prevent error.

28. An automatic logging device has also been installed at Station WLAS. Cartridges are used for commercial announcements other than on one program [17] and the encoder device imposes upon the cartridges an electronic signal which activates a decoder which prints out the exact time, advertiser, cooperative product advertised, and length of spot run throughout the broadcast day in a five digit code. These logger tapes are then attached to the daily logs and are used for cross-checking the accuracy of the station's affidavits. Station WXQR–FM has used this device since commencement of operation. A single encoder is used for both stations.

29. Subsequent to institution of the instant proceeding Mr. Sidney Popkin commenced visiting the stations almost daily, personally checked the logs for accuracy on a daily basis and checked to see that the station was within its commercial limitation of 18 minutes per hourly segment. He also checked the engineering logs, changed the stations' music format despite the objections of the station manager and has revised their affidavit system to use the NAB recommended form. He also reviewed the books and installed a mobile unit at the station to provide more effective service to the Marines at Camp Lejeune by covering their athletic and social events. February 28, 1971 Mr. Parker resigned as station manager and Mr. Sidney Popkin became full-time manager of Station WLAS.

30. In response to Section IV–A, Part IV 23 of the instant renewal application Seaboard shows 52 sixty minute segments of the composite week as containing over 18 minutes of commercial time in any one of which there was a minimum of 18 minutes 40 seconds to a maximum of 31 minutes 10 seconds of commercial time with the average being 22 minutes 36 seconds. Its policy for this period as shown in the last renewal application was normally 20 minutes per hour with a maximum of 22 minutes of commercial matter during military paydays, political campaigns, special events and holidays at which times commercial matter was not to exceed 22 minutes. Eleven segments included up to and including 10 minutes, 10 up to and including 14 minutes and 17 up to and including 18 minutes of commercial matter. In response to Section IV–A Part IV 24 A applicant stated that this information did not adequately reflect its commercial practices and appended Exhibit 11 in explanation thereof and to set forth its proposed commercial practices as shown in Section IV–A, Part V 25 and 26. Its proposed policy called for a maximum of 18 minutes commercial continuity in any 60 minute segment. It is this Exhibit 11 on which the contentions of the Broadcast Bureau as summarized in paragraph 6, *supra*, rested.[18] To assist in understanding the testimony with reference thereto and the contrasting positions of the parties as to the commitments there made, a copy of this Exhibit is attached as Appendix B.

[17] The Paul Parker show, including commercials, was broadcast live. This program has been discontinued and all commercial announcements are now pre-recorded giving positive control on their length.

[18] Copies of Exhibit 11 of the letter and of the monitoring report referred to in paragraph 6, *supra*, were attached to the Broadcast Bureau's petition to enlarge issues filed August 31, 1970.

31. When the station manager prepared a rough draft of the commercial matter for the instant renewal application he became aware that the station had not adhered to its 20 to 22 minute maximum commercial content commitment set forth in the 1966 renewal application. He brought the matter to the attention of Mr. Sidney Popkin who in turn brought it to the attention of communications counsel for the station. At a meeting of the station manager and Mr. Sidney Popkin with counsel in July of 1969, counsel informed them that a "good many" daytimers in small markets faced this situation and he recommended going to a 30-second spot in order to conform to 18 minutes of commercial time per segment. Mr. Sidney Popkin ordered that this be done and a new rate schedule was prepared showing rates for spot announcements in half minutes only with the notation following the half-minute rates "MINUTE RATE IS TWICE THE ABOVE RATE LESS 20%." The salesmen were then instructed "Here are the new rates, go out and sell half-minute spots." For those accounts handled personally by the station manager he had the traffic girl go over the logs and change commercial continuity from one minute to 30-second spots. Some of these advertisers thereafter increased the number of 30-second spots used, others let the reduction in advertising stand. The traffic girl was also instructed to go over the logs to see that no period exceeded 18 minutes commercial continuity and where it did, to change the spots to another period if available and if not, to cancel sufficient Furniture Fair or Boomtown Furniture adds in order to conform to the 18-minute commitment. A recap of the effect of this change was prepared for the first four weeks of August 1969 which showed that during this period four hourly segments exceeded 18 minutes of commercial content these being 18 minutes 10 seconds, 18 minutes 30 seconds, 18 minutes 40 seconds and 19 minutes 40 seconds. This data was submitted with the renewal application at the time of filing and the application was amended February 27, 1970 to recap the advertising by hourly segments for the months of September, October and November of 1969. During this three-month period nine hourly segments contained over 18 minutes, but less than 20 minutes of commercial continuity. The week of August 2 through 8, 1970 was arbiarily selected by SENCLand for analysis of commercial content. The analysis shows that no hourly segment contained more than 18 minutes commercial content. Four hourly segments, 3 to 7 p.m. on Friday, contained 18 minutes commercial continuity with the average for all segments being 10 minutes 11 seconds.

32. Seaboard concedes that it did not adopt or intend to adopt a policy of using strictly 30-second spots and states that the following statement appearing in Appendix B was the result of a misunderstanding, that it was not intended as a commitment to accept only 30-second spots:

> Seaboard undertook the policy of refusing to accept contracts for more than thirty (30) second spots. This immediately substantially affected WLAS's income but took some months before the full effect of using strictly (30) second spots took place.

The stations at that time did have outstanding contracts for one minute announcements and some national advertisers used pre-recorded one minute commercials which were broadcast. Also under the Tobacco Network agreement Station WLAS was required to carry both 30-second and 60-second commercials as sent to them. The policy of accepting 30-second spots only was followed whenever possible with new copy until January or February of 1970 at which time it was found that station income had decreased approximately $6,300 per month and that commercial continuity had been reduced substantially below 18 minutes per hour. At this time the sale of one minute spots was resumed with commercial continuity, however, being limited to a maximum of 18 minutes per hourly segment. Because of adherence to this commitment of limiting commercial continuity to 18 minutes per hourly segment it was believed that there was no substantial change in proposals requiring Commission notification.

33. As shown in paragraph 13, *supra*, approximately one-third of the advertising expenditures of Boomtown Furniture and of Furniture Fair in 1968 were for advertising on Stations WLAS and WXQR–FM. The composite weeks for 1968 and 1970 show the following:

(a) During the 1969 composite week for Station WLAS, of 1673 commercial minutes broadcast, 305 minutes or 18% of the time was devoted to Popkins' owned businesses.

(b) During the 1969 composite week for Station WXQR–FM, of 398½ commercial minutes broadcast, 229½ minutes or 57.3% of the time was devoted to Popkins' owned businesses.

(c) During the 1970 composite week, of 1,447½ minutes of commercial time broadcast over WLAS 306½ minutes or 21.1% of the time was devoted to Popkins' owned businesses.

(d) During the 1970 composite week, of 454½ minutes of commercial time broadcast over WXQR–FM 267 minutes or 58.5% of the time was devoted to Popkins' owned businesses.

(e) During the 1968 composite week, of 1,695½ minutes of commercial time broadcast over WLAS, 304 minutes or 17.9% of the time was devoted to Popkins' owned businesses.

The record does show advertising was carried for competitive firms and that on the dates of December 13, 1968 and May 8, 1969, commercial spots for Mills and Thomas, a competitive firm, were preceded and followed on the same program by announcements for Furniture Fair and Boomtown Furniture. There is no other evidence that would bear on the matter of "the possible anti-competitive effect of Seaboard's commercial practices on other local advertisers and stations" noted as being an implicit consideration under the Section 73.124 issues. (See paragraph 7, *supra*.) As also there noted, such "anti-competitive practices and over-commercialization in the operation of a broadcast facility are relevant facts in evaluating the licensee's past performance" a comparative factor then relevant to the proceeding. Dismissal of the SENCLand application mooted the comparative facets of the proceeding and, accordingly, no findings of fact will be made based on the evidence adduced relevant only to comparative considerations.

34. All commercial announcements on Station WLAS, with the exception of the Paul Parker Show, were pre-recorded and thus accurately timed. Public service announcements of a local origin were broadcast live by WLAS, while those of national associations were pre-recorded. The commercial announcements on the Paul Parker Show were broadcast live by Mr. Parker and were all logged as 30 or 60-second announcements in advance of the show. Generally the commercials were ad libbed from notes rather than from commercial copy in an effort to keep them from sounding too much like a commercial. At times Mr. Parker would get away from the subject matter entirely where a portion of the commercial would remind him of an incident which he would relate and then return to the commercial. At other times, he would answer the "hot-line" telephone [19] during a commercial. As a result, though logged as 30 or 60-second announcements, there was no absolute control over the length of any particular announcement on this program other than the ability of Mr. Parker to judge time. He endeavored to control the total amount of commercial matter by placing fewer commercials on his program than at other times of the day, the number varying from as few as ten to as many as 16. The program was broadcast Monday through Friday from 9:06 a.m. through 10:28 a.m.

35. The length of the commercial announcements on the Paul Parker Show were monitored on the dates August 3 through August 7, 1970 and the WLAS program logs for those dates were submitted into the record and analyzed. For Monday, August 3, the program as logged reflected ten minutes and 30 seconds of commercial continuity whereas the monitoring shows 12 minutes and two seconds of commercial continuity. For Tuesday, August 4, the logs reflected eight minutes and 30 seconds of commercial continuity whereas the monitoring shows 11 minutes and 41 seconds of commercial continuity. For Wednesday, August 5, the logs reflected 11 minutes and 30 seconds of commercial continuity whereas the monitoring shows 15 minutes and four seconds of commercial continuity. For Thursday, August 6, the logs reflected nine minutes and 30 seconds of commercial continuity whereas the monitoring shows 13 minutes and 30 seconds of commercial continuity. For Friday, August 7, the logs reflected 11 minutes and 30 seconds of commercial continuity whereas the monitoring shows 15 minutes and 44 seconds of commercial continuity. The extreme differential of these spot announcements on the Paul Parker Show ran from a low of 50 seconds time monitored on a 60-second logged commercial to a high of 145 seconds monitored time on a 60-second logged spot announcement for the same advertiser. In a number of instances the commercial spots were not broadcast at the logged times or in the logged sequence. Total logged commercial continuity is 51 minutes 30 seconds, total monitored commercial continuity is 68 minutes 1 second with total broadcast time being six hours 55 minutes giving an average of approximately 10 minutes commercial continuity per hour based on this monitoring.

[19] The program was conducted as an "open mike" show on which members of the public could call in to express their views on a subject under discussion. Music also made up portions of the program.

104-009—73——12

36. Section IV–A, question 27 of the instant application requests the following information:

> State the name(s) and position of the person(s) who determines the day-to-day programming decisions and directs the operation of the station covered by this application and whether he is employed full-time in the operation of the station.

In response the following is shown: Jerry Popkin, President, Part-time; Sidney Popkin, Vice-President, Part-time; Paul Parker, Station Manager. Mr. Parker has been a full-time employee of the applicant for the past 15 years. The listing of full-time and part-time employees called for under Section IV–A, question 31, does show Jerry Popkin, Sidney Popkin and Paul Parker all as full-time employees. Both Jerry Popkin and Sidney Popkin did, as reflected in paragraph 19, *supra*, maintain a 12 hour workday during 1968 at Boomtown Furniture and had so responded to the interrogatories served on them. As is also there noted, they did participate in the operation of the stations on a part-time basis. Jerry Popkin and Sidney Popkin also personally handle the real estate operations of Seaboard noted in paragraph 12, *supra*, and draw officers' salaries for their services to Seaboard. These transactions, including rental collections, are handled along with their other duties while at Boomtown Furniture. The only explanation they could offer as to the inconsistency between the responses to Section IV–A question 27 and Section IV–A question 31 of the instant application is that the response to Section IV–A question 31 is inaccurate, the inaccuracy having been overlooked at the time Mr. Jerry Popkin reviewed and signed the application. Mr. Parker had physically prepared the application, in consultation with Mr. Sidney Popkin and counsel.

37. On Monday, July 13, 1970, an advertisement was run in the Jacksonville Daily News for Station WLAS. This advertisement was run to publicize the change to a country and western music format noted in paragraph 29, *supra*, and included the map referred to in paragraph 9, *supra*. Two unlabelled contour lines appear on this map with the statement "THIS IS WLAS COUNTRY" appearing within the inner contour. The lower half of the advertisement contained photographs of record album covers of country and western music artists and the statement "WLAS has gone country five times the power—big country giant." The statement "WLAS, the radio station on the go" appears over the map. The map contours center on the city of Jacksonville, North Carolina. The inner contour embraces the communities of Southport, Wilmington, Carolina Beach and Wrightsville, all in North Carolina, on the south; Clinton, Warsaw, and Goldsboro to the west; and Greenville, Farmville, and Washington, North Carolina to the north. The outer contour embraces the communities of Charlotte, Whitesville and Chadbourn, North Carolina to the south; Elizabethtown, Fayetteville, Dunn, Newton Grove, Coats, Four Oaks, Erwin, Smithfield, and Selma to the west; and Wilson, Tarboro, Williamston, Plymouth, Bell Haven and Swan Quarter to the north.

38. Jacksonville, a city of 16,021 persons [20] is located in Onslow County (population 103,126) [20] about 14 miles inland from the Atlantic Ocean. It is the county seat.

39. The predicted 0.5 mv/m normally protected contour [21] of Station WLAS covers a circular area with a radius of about 52 miles from the WLAS site. The contour on land terminates to the east-northeast and southwest of Jacksonville at the Atlantic Coast. Northeast of Jacksonville, first adjacent channel objectionable interference within the 0.5 mv/m contour from Station WIAM, Williamston, North Carolina (900 kHz, 1 kw, D) reduces the distance to the 0.5 mv/m contour up to three miles in a crescent shaped area along the periphery over a 24 mile arc.

40. Not considering objectionable interference, the reach of the predicted 0.1 mv/m contour of Station WLAS extends 91 miles to the north and west in areas of low ground conductivity and 127 miles to the northeast where the signal is influenced by swampland and the sea water path through Pamlico Sound. To the northwest it extends 105 miles and to the southwest, because of the sea water path, the contour falls at distances of 138 to 152 miles. The predicted 0.1 mv/m contour of Station WLAS is subject to co-channel and adjacent channel objectional interference. Overlap of the predicted 0.1 mv/m contour of Station WLAS by the interfering 0.005 mv/m and 0.1 mv/m contours of co-channel and adjacent channel stations, respectively, is as follows:

Station and location	Facility	Overlap square miles
Cochannel:		
WRNL, Richmond, Va.	910 kHz, 5 kw, DA-N, U	120
WTOY, Roanoke, Va.	910 kHz, 1 kw, D	67
WORD, Spartansburg, S.C.	910 kHz, 1 kw, 5 kw-LS, DA-2, U	94
WNCG, North Charleston, S.C.	910 kHz, 500 w, D	159
Adjacent channel:		
WIAM, Williamston, N.C.	900 kHz, 1 kw, D	85
WBBB, Burlington-Graham, N.C.	920 kHz, 5 kw, D	60
WAYN, Rockingham, N.C.	900 kHz, 1 kw, D	12

41. The two unlabeled contours shown on Seaboard's advertising brochure were 0.5 mv/m and 0.1 mv/m contours of Station WLAS measured as follows. The locations of these contours were determined from field strength measurements taken in the summer of 1964 by Seaboard's station engineer, Mr. Edgar O. Hathaway, holder of a first-class license, upon request of the station manager, Mr. Paul Parker, who wanted to accurately reflect as near as possible where the station actually covered with a listenable signal. Mr. Hathaway considered 0.1 mv/m to be a recognizable contour that gave the station a little additional coverage for the purpose for which the brochure was pre-

[20] 1970 U.S. Census data, Advance Reports.

[21] The predicted 0.5 mv/m and 0.1 mv/m contours of Station WLAS were predicted in accordance with Sections 73.182, 73.183 and 73.184 of the Commission's rules. WLAS is a Class III station authorized to operate daytime only on 910 kHz with a power of 5 kilowatts, utilizing a nondirectional antenna.

pared and, therefore decided to measure the location of that contour as well as the 0.5 mv/m contour.

42. The measurements were made over a period of approximately two weeks. After checking the antenna current of Station WLAS, measurements were taken from mid-morning to late afternoon using a Nems Clarke field strength meter borrowed from another broadcast station. The chief engineer of the station from which the instrument was borrowed advised that it was in calibration and Mr. Hathaway accepted this statement. Spot measurements only were taken rather than following the requirements of the Commission's Rules for preparing a complete field strength study for the purpose of establishing the 0.5 mv/m and 0.1 mv/m contours of a station. As a starting point for taking measurements, he used the location of the predicted 0.5 mv/m contour of Station WLAS submitted by the consulting engineer in connection with the application filed June 15, 1959 and granted March 15, 1961 for an increase in the operating power of Station WLAS from one to five kilowatts. He then proceeded along established highways taking three or four measurements until he obtained a reading of no more than 0.5 mv/m. When this value was obtained it was marked at the appropriate measurement location on the map. Measurements other than 0.5 mv/m were not marked thereon. In all, about eight or nine 0.5 mv/m readings were obtained along various highways over an arc around Station WLAS. Some interference was observed about 25 to 30 miles north of New Bern, North Carolina from a station on 930 kHz [22] in Washington, North Carolina (WITM) and from a station on 900 kHz in Williamston, North Carolina (WIAM). A listenable signal could not be heard in Washington. The distance between 0.5 measurement points varied from 25 to 50 miles. As each 0.5 measurement was taken and recorded on the map, the points were connected by a smooth curve and, upon completion of the last measurement, the curve was heavily retraced with a pencil. Nine or ten measurements were taken employing the same method and procedure to establish the location of the 0.1 mv/m contour of Station WLAS.

43. After the measurements were completed, the map was given to the station manager and Mr. Hathaway had nothing more to do with the matter. The map on which the 0.5 mv/m measurements were recorded was similar, but not identical to the map used for the advertising brochure. The map used for this brochure is an unidentified county map without a mileage scale and there is a slight difference between the location of the contours on the brochure and on the map used in taking the measurements. The advertised contours were transferred by Seaboard's consulting engineer to another map (aeronautical chart) which also showed the predicted 0.5 mv/m and 0.1 mv/m contours of Station WLAS and had an appropriate scale of miles so that a comparison of contours could be made. The advertised 0.5 mv/m contour is generally circular in shape and falls about 54 to 78 miles from the WLAS site. It extends 2 to 6 miles beyond the predicted 0.5 mv/m normally protected contour over some 80% of its sweep.

[22] Interference from a station 20 kHz removed is no longer classified as objectionable interference under the rules.

Over the salt water areas at the termination points on the Atlantic Coast northeast and southwest of Jacksonville, the difference in the location of the measured and predicted contours varies from seven to as much as 27 miles. The advertised 0.1 mv/m contour is also generally circular in shape and falls 89 to 103 miles from the WLAS site. The predicted 0.1 mv/m contour extends two to 17 miles beyond the measured 0.1 mv/m contour over some 80% of its sweep. Over the salt water areas on the Atlantic Coast northeast and southwest of Jacksonville the predicted and measured contours vary from 3 to 41 miles. The predicted 0.1 mv/m contour is under theoretical objectionable interference to the degree shown in paragraph 40, *supra*. Though the area within the measured 0.1 mv/m contour is substantially less than that within the predicted 0.1 mv/m contour there is no record evidence on which a comparison of the predicted 0.1 mv/m interference-free contour with the advertised 0.1 mv/m contour can be made.

CONCLUSIONS

44. The scope of each of the issues as defined in the various orders issued and in the bill of particulars has been set forth in paragraphs one through nine, *supra*, these orders and the bill of particulars defining with precision the matters charged and to be litigated. The foregoing findings of fact have been limited to those matters within the scope of the issues as thus defined and conclusions flowing therefrom will be reached as to each issue seriatim.

45. The Report and Order (1 FCC 2d 1068) adopting Sections 73.124, 73.299 and 73.678 of the Rules (now all encompassed within Section 73.1205) defines double billing as follows: "The main ingredient of the practice is the furnishing of false information concerning broadcast advertising to any party contributing to the payment of such advertising, the purpose being to induce such party to pay more than the actual rate for the advertising. Although 'double billing' may take many forms (the proposed rule is concerned with the principle involved rather than the form in which appears). . . ." By Notice of Proposed Rule Making (FCC 64–258 unreported) it is stated "The essence of the fradulent practice commonly called double billing is the existence of a scheme to defraud a manufacturer, his distributor, jobber or advertising agent or any other party, by deceiving him as to the amount actually charged by a broadcaster for the cooperatively sponsored advertising for which the manufacturer makes part payment." In its public notice *Applicability of Fradulent Billing Rule* 1 FCC 2d 1075 double billing is explained in part as "Most 'double billing' as practiced in the past has been designed to deceive and defraud manufacturers into paying a larger share of a local dealer's cooperative advertising expenditure than was stipulated in their agreements with such local dealers. . . . It should be remembered that the essential element in 'double billing' is the furnishing of false information to any party contributing to the payment of broadcast advertising as to the amount actually charged by the licensee for such advertising or as to the nature, quantity or content of such advertising."

46. The record establishes that Seaboard, through its bookkeeper and Mr. Ivins Popkin, did issue affidavits of performance for Station WLAS which contained false information concerning the amount charged for broadcasting advertising and which did misrepresent the quantity of advertising broadcast by Station WLAS. Seaboard does not dispute the figures set forth in paragraphs 2 and 3 of the bill of particulars (Appendix A) as to the number of spots for which Furniture Fair and Boomtown Furniture were billed by Station WLAS or as to the affidavits issued as there detailed. It urges, however, that the essential element of fraud or the intent to defraud is missing as "fraud in double billing essentially involves a scheme by which a manufacturer parts with some consideration of value in reliance upon false affidavits which he would not have done had the truth been known to him . . . the Seaboard situation is unique. The record does not disclose fraud in the legal sense but rather deception as to the source of advertising actually performed. Had the stores used WXQR, the *Jacksonville Daily News*, or other affidavits to claim credit for the advertising actually done, there would be no basis to this proceeding."

47. The record does establish as shown in the foregoing findings of fact, that both Furniture Fair and Boomtown Furniture did do extensive advertising in various media. Rather than relying on affidavits from the various media used, falsified affidavits for advertising over Station WLAS and, at least for the month of April of 1968, over WXQR–FM were utilized [23] for collection of the cooperative allowances standing to their credit from the various manufacturers or jobbers involved. In view of the comparative amounts involved shown in paragraph 13, *supra*, between the costs to advertisers and to the manufacturers and the facts detailed in paragraph 17, *supra*, there is no basis for concluding that the manufacturers were deceived into paying a larger share of the local dealers' cooperative advertising expenditures than was stipulated in their agreements. Both Boomtown Furniture and Furniture Fair, had Mr. Ivins Popkin bothered to do so, could have submitted valid affidavits from each of the media used to cover the 8.87% of advertising costs paid by the manufacturers. The fact remains, however, that false information was furnished for the purpose of collection of advertising allowances both as to the amount charged by Seaboard for broadcast advertising and as to the quantity and content of such advertising. Where, as here, ownership of both the broadcast station and the advertising entities rests in the same individuals it is not unreasonable to expect the highest degree of circumspection in dealings between entities rather than the utilization of such ownership in the manner shown by the record herein. Ivins Popkin, an official of Seaboard, did knowingly issue affidavits of performance which contained false information in violation of former Section 73.124 (now Section 73.1205) of the Commission's Rules. Whether fraud in the legal sense is or is not present, due to the fact that payment of the sums involved could have been covered by valid affidavits, is not determinative of whether the affidavits issued by Seaboard were

[23] As noted in the findings of fact, paragraph 14, *supra*, claims for advertising allowances generally had to be filed quarterly.

in violation of Section 73.124 of the Rules as charged. The affidavits submitted to the manufacturers were false and it was those affidavits on which payment, at least in part, was based.

48. It is concluded, however, that the record fails to support the charge that members of the licensee or members of the station's staff knowingly misrepresented facts or were lacking in candor in responding to inquiries by members of the Commission's staff at the time of the investigation into this matter. As shown in paragraph 24, *supra*, some of the statements made were inaccurate in the light of subsequent developments and the conclusions with regard thereto here reached. The explanations given are reasonable and what in fact had occurred was thereafter freely stated both in the form of affidavits submitted to the Commission and in the course of the testimony given herein. It, accordingly, must be concluded that none of the parties was lacking in candor and none knowingly misrepresented facts in responding to inquiries during the inquiry into this matter by members of the Commission's staff.

49. Resolution of issue 2 requires a determination as to what in fact was the commitment made and second, the meaning intended to be conveyed by exhibit 11 to the renewal application. (See paragraph 6, *supra*.) Seaboard shows in the instant renewal application that it had not adhered during the composite week to its previous commitment of normally 20 minutes commercial time with a maximum of 22 minutes commercial continuity during an hourly segment. Its commitment shown in Section IV–A, Part V 25 and 26 for the ensuing renewal period is 18 minutes maximum commercial time and attached Appendix B was submitted as Exhibit 11 thereto. Seaboard states that the exhibit was intended to show how the reduction to 18 minutes maximum commercial time per hourly segment was to be achieved and was not intended as a commitment to broadcast only 30-second spot announcements, that the intent was to conform to the 18 minute commercial time per hourly segment commitment through the use of 30-second spots as recommended by its counsel. Exhibit 11 was drafted by counsel and it is conceded by Seaboard that "This statement was apparently categorical in that the exhibit to the renewal applications stated that Seaboard had commenced a policy of 'refusing' to accept spots in excess of 30 seconds." As shown in the findings of fact, Mr. Jerry Popkin, who was not a party to the conference resulting in this statement, reviewed and signed the application. Seaboard asserts that the matter is merely one of a series of misunderstandings rather than being a deliberate attempt to deceive the Commission in its renewal application. The simple answer to this, however, is that the representation was contained in both the renewal application and reiterated in the pleading filed May 11, 1970, signed by counsel and attested to by Mr. Sidney Popkin. Thus it was either a deliberate attempt to mislead or carelessness of such nature as to carry onus equal to that of deliberateness. The policy of 18 minutes per segment was achieved as represented.

50. The allegations as to mislogging the length of commercial spot announcements on the Paul Parker Show are also proved in addition to the fact that they were not, at times, broadcast at the logged times.

Commercial matter was limited to less than the specified 18 minutes per hourly segment. Format of the show was informal and, being conducted as described, obviously subject to the logging problems noted in paragraphs 34 and 35, *supra*. These deviations from the general policy limitation on the length of commercial announcements is another matter, however, of which the Commission should have been fully informed by the licensee rather than it having to come to the Commission through monitoring by a competing applicant. Mr. Parker, who was the station manager and principal author of the renewal application, and both Mr. Sidney Popkin and Mr. Jerry Popkin through the monitoring of Station WLAS testified to, had to be aware of these discrepancies. Moreover, if such a format is to be adopted, there is a responsibility to develop logging practices which correctly reflect that which is broadcast.

51. It is concluded that the conflicting representations as to the employment relationship of Sidney Popkin and Jerry Popkin with Station WLAS in the instant renewal application and the representation in the response to interrogatories, which is consonant with one of these representations, were matters of inadvertent error. There could be no intent to deceive where the conflicting representations appear in the same application and the record herein establishes that until recently, both Mr. Sidney Popkin and Mr. Jerry Popkin did devote only part time to the Seaboard operations.

52. The one time use of the coverage map established by the record resulting in adoption of issue 4 is not a matter raising substantial public interest questions. The map was used in connection with the announcement through the local Jacksonville newspaper of the change in music format of Station WLAS. The map was not used in the direct solicitation of advertisers nor was it used in connection with the station's rate card. The measurements used, however, were not made in conformance with the requirements of the Commission's Rules and the depicted 0.5 mv/m contour was exaggerated as computed using theoretical values. It is true that the 0.1 mv/m contour shown was for a lesser value than that computed using theoretical values without reference to objectionable interference. The measurements used though are completely inadequate to establish definitively the 0.1 mv/m interference-free contour. As stated in *Universal Communications of Pittsburgh, Inc.* 21 FCC 2d 542, 18 RR 2d 491, it is Seaboard's obligation to show that the contours were accurately portrayed, and this obligation was not met.

53. Seaboard has operated Station WLAS since 1954 and this is the first instance, insofar as is shown by the record, that any question has been raised with reference to its operation. Though changes in stock ownership have occurred control, either negative or positive, has at all times rested with the Popkin brothers. They at all times have held affirmative control of Station WXQR–FM and this is the first instance in which questions have arisen in the operation of that station. Following issuance of the show cause order the affirmative steps detailed in paragraphs 26 through 29, *supra*, were taken to attempt to assure continuing compliance with the Commission's Rules and the representations made with reference to the operation of these stations. Other than

for the matters specified under the designated issues, the Commission at the time of consideration of the instant renewal application found that "Except for the matters under litigation in Docket No. 18549, we find Seaboard Broadcasting qualified as a renewal applicant." It accordingly, there specified comparative issues only. This determination is controlling except as to those matters specifically detailed under the noted subsequent enlargements of issues. It is concluded that on the basis of the foregoing findings of fact and conclusions and the entire record herein, renewal of the license for Station WLAS would serve the public interest, convenience and necessity, particularly in view of its prior record and the extensive steps taken to preclude reoccurrence of the matters here placed in issue. It is further concluded, however, that for the violations shown imposition of a forfeiture in the full amount of $10,000 is warranted.

Accordingly, IT IS ORDERED, That unless an appeal to the Commission from this Initial Decision is taken by a party to the proceeding or the Commission reviews the decision on its own motion in accordance with the provisions of Section 1.276 of the Rules, Seaboard Broadcasting Corporation forfeit to the United States the sum of $10,000 for the violations above specified. Payment of the forfeiture may be made by mailing to the Commission a check or similar instrument drawn to the order of the Treasurer of the United States.

IT IS FURTHER ORDERED, That the application herein of Seaboard Broadcasting Corporation for renewal of license to expire December 1, 1972 is granted.

IT IS FURTHER ORDERED, That the Secretary of the Commission shall send a copy of this Initial Decision by certified mail, return receipt requested, to Seaboard Broadcasting Corporation.

FOREST L. MCCLENNING,
Hearing Examiner,
Federal Communications Commission.

APPENDIX A

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of REVOCATION OF THE LICENSE OF SEABOARD BROADCASTING, INC. FOR STANDARD BROADCAST STATION WLAS, JACKSONVILLE, N.C.	Docket No. 18549

BILL OF PARTICULARS

Paragraphs two and six of the Commission's Order in the above-captioned proceeding are based upon the following information and allegations:

1. A Commission inquiry into the operations of Station WLAS, Jacksonville, North Carolina, disclosed that, for the month of April 1968 Furniture Fair, Jacksonville, North Carolina, was billed for 405 spot announcements at a rate of $1.80 each and for 26 such announcements on the "Paul Parker Show" at $3.00 each, for a total billing of $807. Affidavits of performance were issued by Station WLAS on May 13 and 16, 1968, and furnished to the Sealy Mattress Company,

the Zenith Corporation, the Sylvania Corporation and the Speed Queen Division of the McGraw-Edison Company. Each such affidavit represented that Station WLAS had broadcast 300 spot announcements for Furniture Fair and that Furniture Fair had been billed $540 therefor. The affidavits, therefore, represented, in combination, that Furniture Fair had been billed $2,100 [1] for 1,200 spot announcements during the month of April 1968.

2. The records of Station WLAS disclose that during April 1968 Boomtown Furniture, Jacksonville, North Carolina, was billed $540 for 300 spot announcements. Affidavits of performance were issued by Station WLAS on May 13 and 16, 1968, and presented to the Sylvania Corporation and the Speed Queen Division of the McGraw-Edison Company. Each such affidavit represented that Station WLAS had broadcast 300 spot announcements for Boomtown Furniture and that Boomtown Furniture had been billed $540 therefor. The affidavits, therefore, in combination, represented that Boomtown Furniture had been billed $1,080 for 600 spot announcements during the month of April 1968.

3. The Station WLAS records disclose that for June 1968 Boomtown Furniture was billed $567 for 315 spot announcements. Affidavits of performance were issued by Station WLAS on July 5 and 7, 1968, and furnished to the Admiral Corporation and the Speed Queen Division of the McGraw-Edison Company. Each such announcement represented that Station WLAS had broadcast 300 spot announcements for Boomtown Furniture and that Boomtown Furniture had been billed $540 therefor. The affidavits, therefore, in combination, represented that Boomtown Furniture had been billed $1,080 for 600 spot announcements during the month of June 1968.

4. The records of Station WLAS show that Discount Furniture Company, Jacksonville, North Carolina, was billed $79.50 for 53 spot announcements broadcast in September 1968. Affidavits of performance were issued by Station WLAS on October 9, 1968, and presented to the Norge Corporation and the Motorola Corporation. The affidavit furnished to the Norge Corporation stated that Station WLAS had broadcast 33 spot announcements for Discount Furniture Company, that Discount Furniture Company had been billed $49.50, therefor, and that those announcements advertised the products of the Norge Corporation. Station WLAS had broadcast 45 spot announcements for Discount Furniture Company, that Discount Furniture Company had been billed $67.50 therefor, and that those announcements advertised the products of the Motorola Corporation. The affidavits therefore, in combination, represented that Discount Furniture Company had been billed $117 for 78 spot announcements during September 1968.

5. It appears that, as a result of the issuance of the affidavits in question, Furniture Fair, Boomtown Furniture and Discount Furniture Company secured from the manufacturers or distributors to which such affidavits were presented co-operative advertising allowances in excess of that to which the advertisers directly billed by Station WLAS were entitled, and that Seaboard Broadcasting, Inc., knowingly issued affidavits of performance, for presentation to the firms named above, which contained false information concerning the amount actually charged for the broadcast advertising of Boomtown Furniture, Furniture Fair and Discount Furniture Company, or which misrepresented the nature, content or quantity of such advertising, in violation of Section 73.124 of the Commission's Rules and Regulations.

6. Notwithstanding the facts set forth above, the principals and employees of the licensee, when questioned by members of the Commission's staff during a field investigation in December 1968, represented that the station never had issued affidavits or bills for spot advertising which had not been broadcast. On December 4, 1968, Jerry Popkin, president of the licensee, and Sidney Popkin, vice president, denied that Station WLAS ever had issued affidavits or bills for spot advertising which had not been broadcast. On December 6, 1968, Paul Parker, manager

[1] The correct figure as noted on the record would be $2,160 rather than $2,100.

of WLAS, denied to the investigators that affidavits of performance had been prepared for any spot announcements not broadcast. On December 3, 1968, Mrs. Evelyn Cook, bookkeeper at WLAS, stated that she had never sent out bills for announcements that were not broadcast.

GEORGE S. SMITH,
Chief, Broadcast Bureau.

(S) Thomas B. Fitzpatrick

By: THOMAS FITZPATRICK,
Chief, Hearing Division.

APPENDIX B

EXHIBIT NO. 11—APPLICANT'S COMMERCIAL PRACTICES

WLAS is in Jacksonville, North Carolina, a city of 13,491 persons (1960 Census). In addition to this daytimer, there are two other AM's (one full-timer and one-daytimer) and two FM's licensed to Jacksonville. As a result, there is extreme competition to secure and keep advertisers.

A daytimer has a marked disadvantage. While WLAS is licensed to operate from 5:00 A.M. to 7:30 P.M. in July, it is licensed from 7:15 P.M. to 5:00 P.M. in December. Since the market is small and has many stations, all licensees try to secure advertising accounts which will regularly advertise throughout the year. These accounts will not stay with the station unless they can be assured of time, particularly in the latter part of the week. This has resulted in the accumulation of a number of contracted advertisers by WLAS whose business was essential to the sustenance of the station and which accounts were being actively solicited by the new Jacksonville AM which commenced operation since the last renewal.

The applicant, noting this problem, had established a commercial policy of twenty (20) minutes with highs of twenty-two (22) minutes during military pay days, Christmas sales, etc. As a result of the increased competition in the market, Seaboard was in the position of losing a substantial portion of its business if it could not supply the advertisers with time. As a result, WLAS found itself exceeding its policies as is reflected in Exhibit No. 10. To reverse this trend, Seaboard undertook the policy of refusing to accept contracts for more than thirty (30) second spots. This immediately substantially affected WLAS's income but took some months before the full effect of using strictly thirty (30) second spots took place.

As is reflected below, the result of strict enforcement of Seaboard's policy of limiting spots to thirty (30) seconds has come to fruition. Only four times in August did any hours exceed 18 mintues of commercial time and these were all under 20 minutes. Seaboard has instituted strict traffic control to prevent even these miniscule deviations from its new eighteen-minute policy.

However, due to the peculiar nature of this market, Seaboard proposes a twenty (20) minute policy during political campaigns, holiday sales, and special events. The total number of days in which such higher periods of commercial matter may occur will not exceed twenty (20) days per year. The other 345 days per year will be limited to eighteen (18) minutes per hour.

F.C.C. 73-921

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of	
RALPH J. SILKWOOD AND K. C. LAURANCE (TRANSFERORS) AND W. H. HANSEN (TRANSFEREE) For Transfer of Control of Medford Broadcasters, Inc. (KDOV), Medford, Oreg.	Docket No. 18349 File No. BTC-4244
R. W. HANSEN (KCNO), ALTURAS, CALIF. For Renewal of License	Docket No. 18350 File No. BR-2641
MEDFORD BROADCASTERS, INC. (KDOV), MEDFORD, OREG. For Renewal of License	Docket No. 18351 File No. BR-3775

MEMORANDUM OPINION AND ORDER

(Adopted September 6, 1973; Released September 12, 1973)

BY THE COMMISSION: COMMISSIONERS JOHNSON, HOOKS AND WILEY NOT PARTICIPATING.

1. Under consideration are: (a) a petition for partial reconsideration of the Decision of the Commission (FCC 72-397, 34 FCC 2d 989) released May 24, 1972, denying the application of Medford Broadcasters, Inc. for renewal of license of station KDOV, Medford, Oregon; dismissing as moot the application for transfer of control and the petition for partial dismissal of their application, both filed on behalf of Medford Broadcasters, Inc.; denying the motion for leave to take deposition filed by W. H. Hansen, R. W. Hansen and Medford Broadcasters, Inc.; and granting for a period of one year the application of R. W. Hansen for renewal of license of station KCNO, Alturas, California, filed June 23, 1972, by W. H. Hansen and Medford Broadcasters, Inc. (petitioners); (b) a motion for partial stay of the effectiveness of the Decision of the Commission insofar as it denies the application for renewal of license of station KDOV and dismisses as moot the application for transfer of control of Medford Broadcasters, Inc., filed June 23, 1972, by W. H. Hansen and Medford Broadcasters, Inc.; and (c) an opposition to the petition for partial reconsideration, filed June 30, 1972, by the Chief, Broadcast Bureau.[1]

2. The above-described motion for partial stay will be dismissed as moot. Section 307(d) of the Communications Act of 1934, as amended, provides that pending final decision on an application for renewal of license and the disposition of any petition for rehearing

[1] The background of this proceeding is fully set forth in the Commission's Decision FCC 72-397, *supra*, and need not be repeated here.

pursuant to Section 405 of the Act, the Commission shall continue such license in effect.

3. In their petition for partial reconsideration, petitioners request reconsideration of the Commission's Decision to the extent that it denied the application for renewal of station KDOV and dismissed the application for transfer of control of that station. Petitioners allege that the Commission erred in holding that certain principals of Medford Broadcasters committed misdeeds that demonstrate a reckless and wanton disregard of the type and degree of responsibility required of Commission licensees and principals thereof; [2] that both equity and due process require the Commission to view in a mitigative context whatever misdeeds are reflected in the record; and that had the Commission done so, it would have concluded that a penalty short of denial of renewal was warranted. Petitioners further allege that the Commission failed to address their exceptions to the Initial Decision with the degree of specificity required for reasoned decision-making and that hence they are unable to ascertain how the Commission disposed of most of these exceptions. In this regard, petitioners especially complain of the Commission's rulings on Exceptions No. 3, 6, 8–16, 20, 21 and 32–34, which were denied "as decisionally insignificant or because the Examiner's findings reasonably depict the record evidence . . .;" and further argue that the Commission's rulings on Exceptions No. 2, 7, 10, 13 and 40 merely rubber stamp the presiding Judge's failure to take account of factual accuracy. Petitioners also contend that the Commission's grouping together of Exceptions No. 10 and 13 does not accord them due process. Lastly, petitioners conclude that the Commission's alleged summary of the petitioners' misdeeds enumerated in paragraph 5 of its Decision (footnote 2, *supra*) is not supported by the record evidence developed in this proceeding.

4. The petition for partial reconsideration will be denied. In our opinion, petitioners' mitigative arguments are nothing more than a reiteration and reargument of their version of the record facts developed in this proceeding, which we have already once considered and rejected. *Cf.*, for instance, paragraph 13 of our Decision dealing with such matters, where we made clear that we could neither disregard the record evidence in this proceeding nor ignore the mandates of the Communications Act which preclude favorable action on an application for renewal of license unless the public interest, convenience and necessity would be served thereby. In this vein, we have repeatedly held that reconsideration will not be granted merely for the purpose of again debating matters upon which the Commission has once deliberated and spoken, and we perceive no reason why we should here

[2] Paragraph 5 of the Commission's Decision stated that a careful review of the record revealed, and the Judge properly found, that over an extended period of time (1958 to 1967), W. H. Hansen—either individually or in collaboration with other persons—repeatedly filed incomplete, false and misleading information and representations with the Commission; persistently failed to apprise the Commission of important changes in the corporate structure, ownership and control of Medford Broadcasters and station KDOV as required by the Rules; participated in the *de facto* transfer of control of Medford Broadcasters and station KDOV; permitted station KDOV to remain silent for nearly six years, without obtaining the prior approval of the Commission; at times, knowingly misrepresented to the public the true ownership and/or control of Medford Broadcasters and station KDOV; and clearly evidenced to the Commission a proclivity for being less than candid.

hold otherwise. *See WEOK Broadcasting Corp.* (*WEOK*), FCC 65–115, 4 RR 2d 503 (1965), *citing WWIZ, Inc.*, 37 FCC 685 (1964) and *Florida Gulfcoast Broadcasters, Inc.*, 37 FCC 833 (1964).

5. We now turn to petitioners' arguments challenging our disposition of some of their exceptions to the Initial Decision in this proceeding. Here again, in appealing these rulings, petitioners in essence are urging us to accept their version of certain matters of record which we have already once rejected when reviewing the Initial Decision and the exceptions thereto. However, in order to correct the ambiguity in setting forth our rulings on Exceptions No. 3, 6, 8–16, 20, 21 and 32–34 that petitioners have pointed out, and to ensure that the rulings on all of the exceptions have been properly set forth in our Decision, we have undertaken on our own motion a review of all the exceptions to the Initial Decision in this proceeding and our rulings thereon, paying particular attention to those exceptions and rulings which petitioners now contend were incorrectly or ambiguously disposed of. Having thoroughly reviewed these matters, we believe that petitioners have failed to present any valid reason—nor have we discovered any—which would warrant reconsideration of any of our rulings on the exceptions or now require us to reach a different result. More particularly, we are convinced that Exceptions No. 3, 6, 8–16, 20, 21 and 32–34 were correctly denied on their merits. However, as alluded to *supra*, it would appear that because this group of exceptions was disposed of as either decisionally insignificant or because the presiding Judge's findings correctly depict the record evidence, it is unclear which ground for denial is applicable to which exception. Accordingly, we wish to make clear that our rulings on these exceptions should have been and are that Exceptions No. 3, 9, 12, 14, 20, 21, 32 and 33 are denied as decisionally insignificant; that Exceptions No. 6, 11, 13, 15 and 16 are denied because the presiding Judge's findings reasonably depict the record evidence; and that Exceptions No. 8, 10 and 34 are denied both as decisionally insignificant and because the presiding Judge's findings reasonably depict the record evidence. The above clarification does not require us to reach a different result in this proceeding.

6. We find petitioners' objections to the rulings on Exceptions No. 10, 13 and 40 [3] to be totally without merit. The record evidence clearly indicates that Klukkert did not initially have any ownership interest in station KDOV; and, accordingly, our adoption of the presiding Judge's finding that Klukkert was an outsider to that station as a basis for denying Exception No. 10 is fully supported by the record evidence.[4] Moreover, in view of the preponderence of the other record evidence in this proceeding, Exception No. 10 was also properly denied as decisionally insignificant. Petitioners' further contention that we erred in adopting the presiding Judge's findings in rejecting Exception

[3] Exceptions No. 2 and 7 were granted, and we are unable to perceive the basis of petitioners' objections to the disposition of these exceptions when reviewed in light of the relief requested.

[4] Tr. 842. Indeed, in their proposed findings of fact at para. 27, petitioners themselves characterized Klukkert as "someone . . . from the outside" notwithstanding the undisputed fact that he was then employed as a salesman at station KDOV.

No. 13 is likewise rebutted by the record, which shows that at the time W. H. Hansen executed his December 2, 1960 affidavit, he did not disclose fully all of his ownership interests in station KDOV.[5] Finally, we find no merit to petitioners' objection to our treatment of Exception No. 40. That exception was denied in light of the holdings of the Decision simply because, after careful review of the record before us, we agreed with the great majority of the presiding Judge's findings and conclusions and nothing now before us requires a different holding. Moreover, we have repeatedly held that one who files a blanket exception—as did the petitioners in filing Exception No. 40—and who fails to heed the Commission's particularity requirements, will not be heard to urge greater specificity with respect to a blanket ruling in response to such an exception. *Veterans Broadcasting Co., Inc.*, 38 FCC 25, 72 n. 1 (1965).

7. As the preceding paragraphs demonstrate, petitioners' arguments—including those not specifically mentioned herein but nevertheless considered by us—in support of the relief here requested are totally without merit, since they fail to present any valid reason which would warrant reconsideration of our Decision in this case or require any different result than that already reached by us. For these reasons, we believe that the instant petition for partial reconsideration should be denied without further consideration.

8. Accordingly, IT IS ORDERED, That the motion for partial stay filed June 23, 1972, by W. H. Hansen and Medford Broadcasters, Inc., IS DISMISSED AS MOOT.

9. IT IS FURTHER ORDERED, That the petition for partial reconsideration filed June 23, 1972, by W. H. Hansen and Medford Broadcasters, Inc., IS DENIED.

10. IT IS FURTHER ORDERED, That Medford Broadcasters, Inc., submit the license for station KDOV to the Secretary of the Commission for cancellation within thirty (30) days of the release date of this Memorandum Opinion and Order, unless it seeks judicial review of our Decision.

11. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Acting Secretary.*

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[5] Tr. 346–49.

F.C.C. 73-886

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
AMENDMENT OF FOOTNOTE US117 IN PART 2 OF THE COMMISSION'S RULES TO REQUIRE THE PRIOR COORDINATION OF APPLICATIONS FOR RADIO STATIONS IN THE 407–409 MHz BAND IN THE VICINITY OF THE BOULDER, COLO., SOLAR OBSERVATORY

ORDER

(Adopted August 29, 1973; Released August 31, 1973)

BY THE COMMISSION: COMMISSIONERS JOHNSON AND REID ABSENT.

1. Footnote US117 to the Table of Frequency Allocations, § 2.106 of the Rules, sets forth special coordination requirements for proposed radio facilities in the 406–410 MHz band to be operated in the vicinity of radio astronomy observatories listed in the footnote. The Interdepartment Radio Advisory Committee (IRAC), acting on a request of the U.S. Department of Commerce, has recommended that footnote US117 be amended in the Commission's Rules to add the Boulder, Colorado, Solar Observatory to the list of observatories contained in the note.

2. The Boulder observatory is owned and operated by the Department of Commerce for the purpose of obtaining solar data of importance to Government and the scientific community. Measurements involve the use of sensitive radio receiving equipment tuned to operate in the 406–410 MHz range. The special coordination procedure contained in US117 would minimize the chance of harmful interference being caused to the observatory by certain transmitting stations which are also authorized to operate in this band.

3. The 406–410 MHz band is allocated nationally for both Government and non-Government use. However, non-Government use of the band is limited to the radio astronomy service and to the transmission of hydrological and meteorological data in cooperation with Federal agencies on certain frequencies listed in footnote US13.

4. To extend the coordination procedure to the Boulder observatory without unduly restricting Government radio operations in the area, the IRAC concluded that the provisions of US117 should apply in this particular case to the smaller band segment 407–409 MHz. The only non-Government operation permitted within this narrower band is radio astronomy, to which the procedures of US117 do not apply. Therefore, as non-Government interests are not affected, the proposed amendment is being adopted herein without prior public notice.

5. Accordingly, pursuant to authority contained in Sections 4(i) and 303 of the Communications Act of 1934, as amended, IT IS ORDERED, that effective October 12, 1973, footnote US117 to the Table of Frequency Allocations, § 2.106 of the Commission's Rules, is amended as set forth in the Appendix.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Acting Secretary.*

APPENDIX

Part 2 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

In Section 2.106, footnote US117 is amended to read as follows:

US117 In the Band 406–410 MHz, all new authorizations will be limited to a maximum of 7 watts per kHz of necessary bandwidth; existing authorizations as of November 30, 1970, exceeding this power are permitted to continue in use.

New authorizations in this band for stations, other than mobile stations, within the following areas are subject to prior coordination by the applicant with the Secretary of the Committee on Radio Frequencies of the National Academy of Science:

Arecibo Observatory: Rectangle between latitudes 17°30′ N. and 19°00′ N. and between longitudes 65°10′ W. and 68°00′ W.

Boulder, Colorado Solar Observatory (407–409 MHz only): Rectangle between latitudes 39°30′ N. and 40°30′ N. and longitudes 104°30′ and 106°00′ W. or the Continental Divide whichever is further east.

Five College Radio Astronomy Observatory: Rectangle between latitudes 41°40′ N. and 42°50′ N. and between longitudes 71°20′ W. and 73°20′ W.

Owens Valley Radio Observatory: Two contiguous rectangles one between latitudes 36° N. and 37° N. and longitudes 117°40′ W. and 118°30′ W., and the second between latitudes 37° N. and 38° N. and longitudes 118° W. and 118°50′ W.

Pennsylvania State University Radio Astronomy Observatory: Rectangle between latitudes 40°00′ N. and 41°40′′ N. and longitudes 77°15′ W. and 78°40′ W.

Sagamore Hill Radio Observatory: Rectangle between latitudes 42°10′ N. and 43°00′ N. and longitudes 70°31′ W. and 71°31′ W.

Vermillion River Observatory: Rectangle between latitudes 38°35′ N. and 41°31′ N. and longitudes 86°15′ W. and 89°30′ W. The non-Government use of this band is limited to the radio astronomy service and as provided by footnote US13.

F.C.C. 73-938

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re TRIANGLE CABLE CO., OAKDALE, CALIF. Request for Order to Show Cause	CSC-23 CA 256

MEMORANDUM OPINION AND ORDER

(Adopted September 11, 1973; Released September 13, 1973)

BY THE COMMISSION: COMMISSIONER ROBERT E. LEE ABSENT.

1. On September 7, 1972, Great Western Broadcasting Corp., licensee of Television Broadcast Station KXTV, Sacramento, California, filed a "Petition for Order to Show Cause" directed against Triangle Cable Co., a subsidiary of Cablecom-General, Inc., and operator of a cable television system at Oakdale, California. Great Western requests that Triangle be directed to show cause why it should not be ordered to cease and desist from unauthorized carriage of the signal of Station KFSN-TV, Fresno, California.

2. Triangle operates a 12-channel cable television system located within the specified zone of the Sacramento-Stockton-Modesto television market (#25). Great Western asserts that Triangle's carriage of KFSN-TV was unauthorized because it had not received certification to carry the signal nor has it evidence that the disputed carriage was permitted by earlier Commission decision or Section 74.1105 notification. Triangle initially opposed on the grounds that the signal had been carried prior to its purchase by Cablecom in December, 1970, and that the previous owners had represented during negotiation that the system's signal carriage had been properly authorized; however, on January 10, 1973, Triangle asked the Commission to dismiss the petition because it had deleted the disputed signal. The request contains an assurance that KFSN-TV will not be carried unless the document of authorization is located, at which time Triangle would reopen the matter.

3. It is clear that the carriage dispute is resolved, and the matter ordinarily could be dismissed as moot. Great Western opposes dismissal, however, and argues that Triangle's failure to delete the signal prior to the filing of the request for Order to Show Cause somehow shows bad faith sufficient to require that we direct an Order to Show Cause. We have considered the circumstances surrounding the illegal carriage, and Triangle's refusal to terminate carriage until it had investigated the matter, and conclude that they furnish insufficient basis to warrant the issuance of an Order to Show Cause.

In view of the foregoing, the Commission finds that the issuance of the requested Order to Show Cause would not be consistent with the public interest.

Accordingly, IT IS ORDERED, That the "Petition for Order to Show Cause" filed September 7, 1972, by Great Western Broadcasting, Inc., IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Acting Secretary.*

F.C.C. 73-916

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
AMENDMENT OF SECTIONS 74.734 AND 74.1234 OF THE RULES PERTAINING TO UNATTENDED OPERATION OF TV AND FM TRANSLATOR STATIONS

ORDER

(Adopted September 6, 1973; Released September 13, 1973)

BY THE COMMISSION: COMMISSIONER ROBERT E. LEE ABSENT.

1. On August 29, 1972, the Commission adopted an Order (FCC 72-777, released September 1, 1972), construing the word "prompt" in sections 74.734 and 74.1234 of the Commission's rules [1] to mean 30 minutes, for the purpose of providing guidance to applicants and licensees as to the meaning of the word within the context of the rule. We issued the order without instituting a rule-making proceeding because the change was interpretative, it having long been policy, on a staff level, to interpret the term in that manner. On October 2, 1972, petitions for reconsideration were filed by seven licensees of translator stations,[2] challenging our assertion that the change was interpretative and contending that a rule-making proceeding was mandatory. We need not decide that issue, however, because our decision on this proceeding moots the question.

2. Petitioners argue that the fact that translators are generally located in remote areas means that there is little likelihood of interference which could be caused by defective operation. We cannot accept that argument, for there exists a great danger of interference to aircraft radio operations, land-mobile radio operations, public safety radio systems and other radio operations, irrespective of the remoteness of a transmitter. We are firmly convinced of the need for the rule and we are here concerned only with how that rule will be worded and administered.

3. What constitutes "prompt" is a matter of judgment susceptible to widely varying interpretations by licensees. Similarly, the amount of time reasonably required by the person designated to suspend operation of a translator in an emergency may vary greatly, depending upon terrain, accessibility from roads, weather conditions, and sim-

[1] Sections 74.734 and 74.1234 provide that the Commission shall be supplied with the name, address and telephone number of a person or persons who may be contacted to secure prompt suspension of a translator should this be deemed necessary by the Commission.

[2] The petitioners are listed in Appendix I hereto.

ilar factors. We now accept the fact that it may not be feasible to attempt to apply a specific time limit to all situations with the expectation that it can be met under all circumstances, but we continue to believe that a word such as "prompt" is too vague to fairly apprise licensees as to what is expected of them and it offers them no guidance. Some middle ground is obviously necessary. We have, therefore, decided to restore the term "prompt" to the rules with the clear understanding that it will be construed to mean no more than three hours unless unforeseeable extraordinary circumstances beyond the licensee's control make it impossible to effect suspension within that time. The burden of showing the existence of such circumstances will be on the licensee who is unable to comply within three hours. Fortunately, the occasions when it has been necessary to invoke the rule have been few, but because we are concerned with emergency situations, we think that it is necessary for the Commission to retain the means to accomplish suspension of a translator as quickly as prevailing conditions will permit.

4. For the reasons stated, IT IS ORDERED, That pursuant to the authority contained in Sections 4(i) and 303 of the Communications Act of 1934, as amended, the petitions for reconsideration filed herein ARE GRANTED, the Commission's Order adopted August 29, 1972 (FCC 72–777) IS SET ASIDE, and Sections 74.734 and 74.1234 ARE AMENDED to read as set out in Appendix II attached hereto effective October 23, 1973.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Acting Secretary.*

APPENDIX I.—PARTIES FILING PETITIONS FOR RECONSIDERATION

XYZ Television, Inc., licensee of station KREX–TV, Grand Junction, Colorado, and K70EM, Little Cimarron Creek, Colorado.

Doubleday Broadcasting Company, Inc., licensee of station KROD–TV, El Paso, Texas, and K71CH, Alamogordo, New Mexico, and KØ7IS, Las Cruces, New Mexico.

Golden Empire Broadcasting Company, licensee of station KHSL–TV, Chico, California, and K11JU, Quincy, California.

Communications Investment Corporation, licensee of stations KALL(AM) and KALL–FM, Salt Lake City, Utah, and FM translator stations K257AA, Vernal, Utah, K288AD, Myton, Utah, and K288AA, Evanston, Wyoming.

Pacific and Southern Broadcasting Company, licensee of stations KHON–TV, Honolulu, Hawaii, and K77AR, Lihue, Hawaii.

KUTV, Inc., licensee of stations KUTV(TV), Salt Lake City, Utah and K64AA, Ford, Ridge, Utah, K67AA, Frisco Peak, Utah, and K75BW, Lauan, Utah.

The KLIX Corporation, licensee of station KMVT(TV), Twin Falls, Idaho, and KØ9AQ, Ketchum, Idaho, K13HG, Ketchum, Sun Valley and Warm Springs, Idaho, and KØ9IR, Albion, Elba and Idahome, Idaho.

APPENDIX II

Part 74 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

Part 74—Experimental, Auxiliary, and Special Broadcast, and Other Program Distributional Services.

1. In § 74.734, paragraph (a), subparagraph (4) is amended to read as follows:

§ 74.734 Unattended operation.

(a) * * *

(4) The Commission shall be supplied with the name, address, and telephone number of a person or persons who may be contacted to secure suspension of operation of the translator promptly should such action be deemed necessary by the Commission. Such information shall be kept current by the licensee.

* * * * * * *

2. In § 74.1234, paragraph (a), subparagraph (4) is amended to read as follows:

§ 74.1234 Unattended operation.

(a) * * *

(4) The Commission shall be supplied with the name, address, and telephone number of a person or persons who may be contacted to secure suspension of operation of the translator promptly should such action be deemed necessary by the Commission. Such information shall be kept current by the licensee.

* * * * * * *

F.C.C. 73-913

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMENDMENT OF SECTION 73.606(b), TABLE OF ASSIGNMENTS, TELEVISION BROADCAST STATIONS. (ANN ARBOR, FLINT, MOUNT CLEMENS, PORT HURON, AND SAGINAW, MICH.)	Docket No. 19718 RM-1854

REPORT AND ORDER

(Adopted September 6, 1973; Released September 12, 1973)

BY THE COMMISSION: COMMISSIONER ROBERT E. LEE ABSENT.

1. The Commission here considers the Notice of Proposed Rule Making in this docket, adopted April 4, 1973 (FCC 73-368; 38 Fed. Reg. 9315), proposing amendment of the TV Table of Assignments (Section 73.606(b) of the Commission's Rules and Regulations) as concerns Ann Arbor and other communities in Michigan.

2. The Notice was based on the petition of Wolverine-Morningstar Broadcasting, Inc. (Wolverine-Morningstar), seeking the assignment of a first commercial television channel to Ann Arbor, Michigan. The Notice described Wolverine-Morningstar,[1] and adduced certain basic information. Ann Arbor has a population of 99,797,[2] and it is the seat of Washtenaw County, population 234,133 (which constitutes the Ann Arbor Standard Metropolitan Statistical Area). Wolverine-Morningstar indicated that it would promptly file an application for a construction permit if the channel was assigned, and it affirmed this intention in its comments. The petitioner had asserted that while service was received from six television stations (five Detroit and one at Windsor), it felt that Ann Arbor merits a commercial channel of its own.[3] We need not repeat other information.

3. As the Notice stated, the Wolverine-Morningstar proposal was altered because of a conflict with a major reallocation plan for lower Ontario submitted by Canada for Commission approval on March 6, 1973. In the circumstances, the Commission proposed to assign Channel 31 to Ann Arbor in lieu of the original proposal, and this required changes elsewhere. As particularly relevant, Channel 31 must operate from a transmitter site at least 18 miles west-northwest of the Ann Arbor reference point to meet mileage separations to stations and assignments and a station with a transmitter so situated may provide Ann Arbor with the requisite principal community signal (Section

[1] It is a Michigan corporation, consisting of nine stockholders, seven of whom reside in Ann Arbor and represent a cross-section of economic, social, and civic life of that community and the area.
[2] All population information is from the 1970 Census unless otherwise stated.
[3] Channel *58 is already assigned to that community.

73.685(a)). However, Wolverine-Morningstar's original proposal had the same limitation and, as already noted, it has affirmed its willingness to proceed to apply for the channel if assigned.

4. The parties commenting are the petitioner, Wolverine-Morningstar; Rust Craft Broadcasting Company (Rust Craft), licensee of Station WEYI–TV, operating on Saginaw Channel 25 with identification as Saginaw-Flint-Bay City, Michigan; and the Association of Maximum Service Telecasters, Inc. (AMST). As already noted, Wolverine-Morningstar supports the assignment and represents that if it is made it will promptly seek authority to construct and operate a commercial broadcast station on Channel 31.

5. Both AMST and Rust Craft oppose the petition. AMST's objections concern two matters. Its first objection is a general one bottomed on short spacing of Channel 31 from the Ann Arbor *reference point* to the transmitter sites of Stations WDHO–TV, Channel 24, Toledo, Ohio (13 miles), and WGTE–TV, Channel 30, Toledo, Ohio (8.9 miles) and to the reference points for Channel 38 at Mount Clemens, Michigan (10.9 miles), and Channel 32 at Windsor, Ontario (9.5 miles). AMST, however, recognizes that these short spacings are not material considering the fact that the transmitter site for Channel 31 at Ann Arbor must be 18 miles west-northwest of the reference point and, thus, all the spacings would be met. The other AMST objection concerns the short spacing from Station WEYI–TV to the proposed Channel *28 assignment at Flint. Since this also serves as the basis for Rust Craft's objection, we discuss the two together in Para. 6.

6. Both Rust Craft and AMST point out that the Flint reference point is only about 14 miles from the new transmitter site of Station WEYI–TV, while our rules (§§ 73.610 and 73.698) require a 20 miles spacing to protect against harmful intermodulation interference. In this respect, it appears that Channel *28 could be located in a substantial area southeast of Flint and, thus, there would appear to be no problem. AMST, in anticipation of this fact, states that it is not sufficient to merely show that there is an area where a transmitter may be located consistent with mileage requirements and that a showing must be made of specific availability taking into account zoning, FAA considerations, economic factors including coverage, topography, and the area to be served.

7. The Commission in proposing Channel *28 at Flint was cognizant of the potential interference to Station WEYI–TV if a station were located near the Flint reference point. However, it is evident that there is a large area within which a transmitter site for operation on Channel *28 could be selected which meets all spacing requirements. In the circumstances, we do not feel that the matter is of as great a concern as AMST wishes us to believe. Our examination shows site availability as near as six miles to Flint and others toward Pontiac.[4]

[4] The area of availability centers on a point roughly midway between Ann Arbor and Pontiac and covers at least 250 square miles.

In our view, the appropriate balance of interests require the assignment of Channel 31 to Ann Arbor and making the other changes in the other communities in Michigan accordingly. Accordingly, we find that the public interest, convenience and necessity would be served by assigning Channel 31 to Ann Arbor, substituting Channel *28 for *31 at Flint, and making changes in assignments at Mount Clemens, Port Huron, and Saginaw. All the changes are of bare assignments.

8. Authority for this action taken here is found in Sections 4(i), 303 (g) and (r), and 307 (b) of the Communications Act of 1934, as amended.

9. Accordingly IT IS ORDERED, That the Television Table of Assignments (Section 73.606(b) of the Commission's Rules and Regulations) IS AMENDED effective October 23, 1973, as concerns the following communities in Michigan:

City:	*Channel No.*
Ann Arbor, Mich	31+, *58+
Flint, Mich	12−, *28−, 66−
Mount Clemens, Mich	38+
Port Huron, Mich	46+
Saginaw, Mich	25−, 45−

10. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Acting Secretary.*

F.C.C. 73–892

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of APPLICATIONS FOR THE TRANSFER OF CONTROL OF D. H. OVERMYER COMMUNICATIONS CO., INC. AND D. H. OVERMYER BROADCASTING CO., INC. FROM D. H. OVERMYER TO U.S. COMMUNICATIONS CORP.	Docket No. 18950 Files Nos. BTC–5376, 5377, 5378, 5379, and 5380

ORDER

(Adopted September 6, 1973; Released September 11, 1973)

BY THE COMMISSION: COMMISSIONER ROBERT E. LEE ABSENT.

1. The Commission has under consideration a Petition for Special Relief, filed July 6, 1973, by D. H. Overmyer, D. H. Overmyer Communications Company, Inc., and D. H. Overmyer Broadcasting Company, Inc.: an opposition thereto, filed July 24, 1973, by the Chief, Broadcast Bureau; and a reply, filed August 23, 1973, by Overmyer. In its petition, Overmyer requests that the Commission consider the Initial Decision, FCC 73D–23, released May 4, 1973, and terminate the proceeding. Since consideration of the Initial Decision in this proceeding is properly a matter for the Review Board and since this proceeding could not be terminated without such consideration of the Initial Decision, Overmyer's petition is prohibited by Section 0.361(c) of the Rules, which provide that no request for the Commission to direct the Review Board to certify a matter to the Commission will be entertained. Although Overmyer's reply joins in the Bureau's suggestion of an alternative, remand procedure, it is clear that such an action, if appropriate at all, could only be taken after careful review of the existing record and that this also is a matter which can only be handled by the Review Board under Section 0.361(c).

2. Accordingly, IT IS ORDERED, That the Petition for Special Relief, filed July 6, 1973, by D. H. Overmyer, D. H. Overmyer Communications Company, Inc., and D. H. Overmyer Broadcasting Company, Inc. IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, Acting Secretary.

F.C.C. 73R–314

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

WARRENSBURG CABLE, INC., COMPLAINANT, *v.* UNITED TELEPHONE CO. OF MISSOURI, UNITED UTILITIES, INC., AND UNITED TRANSMISSION, INC., DEFENDANTS	Docket No. 19151
In Re Applications of UNITED TRANSMISSON, INC. AND UNITED TELEPHONE CO. OF MISSOURI For Certificate of Public Convenience and Necessity for Construction and Operation of CATV Channel Facilities in Warrensburg, Mo.	Docket No. 19152 P–C–7655, P–C–7656

MEMORANDUM OPINION AND ORDER

(Adopted August 30, 1973; Released September 4, 1973)

BY THE REVIEW BOARD:

1. Before the Review Board is a motion, filed July 25, 1973, by Cypress Cable Corp. to change its name in this proceeding to Warner-CCC, Inc.[1]

2. In response, Warrensburg Cable, Inc. (Warrensburg) submits that the grant of this motion should be conditioned upon the furnishing for the record of certain information concerning Warner-CCC, Inc., and upon the recognition that Warner-CCC, Inc. and its predecessors have ben represented by counsel throughout this proceeding. The Common Carrier Bureau and Cable Television Bureau have no objection to the grant of the motion.

3. The Review Board will grant the motion. The Commission has framed the issues for hearing in this proceeding, 27 FCC 2d 727, 21 RR 2d 170 (1971); petitioner has not alleged and it is not apparent to the Board how the aforementioned change of name, or any of the information requested by Warrensburg, is relevant to a resolution of any of these issues. Under these circumstances, the Board perceives no reason for requiring further information at this time.

4. Accordingly, IT IS ORDERED, That the motion to change name of party, filed on July 30, 1973, by Cypress Cable Corp. IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Acting Secretary.*

[1] Also before the Board are the following related pleadings: (a) Response, filed July 30, 1973, by Warrensburg Cable, Inc.; (b) Response, filed July 30, 1973, by the Common Carrier Bureau and Cable Television Bureau.

F.C.C. 73-907

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of W.G.P.R., INC., DETROIT, MICH. For Construction Permit For New Television Broadcast Station	File No. BPCT-4554

MEMORANDUM OPINION AND ORDER

(Adopted September 6, 1973; Released September 12, 1973)

BY THE COMMISSION: COMMISSIONER ROBERT E. LEE ABSENT. COMMISSIONERS JOHNSON AND WILEY CONCURRING IN THE RESULT.

1. We have before us for consideration: (1) a request for reconsideration, filed June 19, 1973, by the Association of Maximum Service Telecasters, Inc. (MST), of our action (FCC 73-587) of May 31, 1973, granting the application (BPCT-4554) of W.G.P.R., Inc. (W.G.P.R.), for a construction permit for a new commercial television broadcast station to operate on channel 62, Detroit, Michigan, and (2) comments on the request for reconsideration, filed June 29, 1973, by W.G.P.R.

2. In our prior action granting of W.G.P.R.'s application, we waived the provisions of section 73.610(d) of the rules which require, in part, that UHF stations maintain certain minimum mileage separation requirements in order to preclude oscillator interference. W.G.P.R. proposed to operate its station at the transmitter site formerly occupied by television broadcast station WXON when it operated on channel 62.[1] The transmitter site is approximately 53 miles from the reference point in East Lansing, Michigan, to which reserved channel *69 is assigned. The site is, therefore, approximately 7 miles short of the 60-mile spacing required by sections 73.610(d) and 73.698 of the rules. Station WXON(TV) operated from this transmitter site which is located approximately 11 miles outside of Detroit, under a waiver of our mileage separation requirements. W.G.P.R. submitted a waiver request and stated that use of the proposed transmitter site would result in the early activation of the proposed station since lease arrangements were available and little actual construction was required. MST filed a statement which indicated that since there was a substantial area west of East Lansing from which channel *69 could be used at a site meeting all of the mileage separation requirements, it would not oppose a grant of W.G.P.R.'s application. Nevertheless, MST requested that if the application was granted, we should make clear that channel *69 at East Lansing was to be used at a site consistent with all mileage separation requirements. However, in order

[1] Station WXON(TV) now operates on channel 20, Allen Park, Michigan.

to maintain our flexibility in considering any future proposal for operation on channel *69, we made the grant of W.G.P.R.'s application subject to the following condition:

> The permittee shall accept whatever interference may result in the event that the Commission grants an application specifying operation on channel *69, East Lansing, Michigan, at less than standard spacing.

3. In its petition for reconsideration, filed pursuant to section 1.106 of the rules, MST requests that we delete the condition attached to W.G.P.R.'s construction permit and require that any future use of channel *69 at East Lansing must be at a transmitter site which complies with all of our mileage separation requirements. In support of its petition, MST asserts that it does not know of a single previous instance involving a waiver of the mileage separation requirements in which the Commission imposed the above-type condition. Specifically, MST contends that such a condition was not attached to the grant of a similar waiver request filed by station WXON(TV) when it operated on channel 62 at the same transmitter site. MST states that in a situation where a proposed transmitter site for one assigned channel is short-spaced to the reference point of another unoccupied assignment, the Commission has usually followed the procedure of determining whether there was a substantial area in the vicinity of the unused assignment from which the channel could be used at a site meeting all mileage separation requirements. MST concludes that the effect of the condition might be to encourage short-spacing proposals both in East Lansing and elsewhere. Moreover, it is alleged that our imposition of the condition could be interpreted as implying that short separations may be authorized whenever agreed to by the stations involved. In its comments, W.G.P.R. indicates that while it is concerned about the possibility of interference from a future operation on channel *69, it does not believe that the action requested by MST is necessarily warranted at this time.

4. Initially, we note that MST is incorrect in its assertion that the same condition was not placed on station WXON's authorization to operate from the short-spaced transmitter site now proposed by W.G.P.R. Thus, in August 1967, we waived section 73.610(d) of the rules and granted station WXON's application (BMPCT-6433) for a change in transmitter location subject to the condition that station WXON accept whatever interference might result in the event that we granted an application for operation on channel *69, East Lansing, at less than standard spacing. MST has expressed its concern that our imposition of the condition might encourage a subsequent proposal for operation on channel *69, East Lansing, at a short-spaced transmitter site. In this connection, we note that since we are aware that there is an area in the vicinity of East Lansing from which channel *69 could be used in compliance with our mileage separation requirements, an applicant proposing a short-spaced operation would have a particularly heavy burden in establishing that the use of a short-spaced site would better serve the public interest. Moreover, as we have previously indicated, the condition on W.G.P.R.'s construction permit is intended only to maintain our flexibility in considering any future proposal for

operation on channel *69.[2] Finally, with respect to MST's general observation that our action might lead to an increase in short-spaced proposals, we believe that it is sufficient to point out that we have always been committed to a policy of maintaining the integrity of our mileage separation requirements and, therefore, in the absence of compelling public interest considerations, we will continue to reject short-spaced proposals.

5. IT IS ORDERED, That the request for reconsideration filed by the Association of Maximum Service Telecasters, Inc., IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Acting Secretary.*

[2] In this connection, it should be noted that we have been advised by W.G.P.R. that it is presently preparing an application to change the station's transmitter location to a site in the city of Detroit, from which the station would operate in compliance with the Commission's mileage separation requirements. Our grant of such an application would eliminate the necessity for the present condition.